No 36
October Term 1874

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 307.

DECEMBER TERM, 1873.

DENNIS G. LITTLEFIELD AND IRA JAGGER,

Appellants,

vs.

JOHN S. PERRY, TRUSTEE, ETC., *Appellee.*

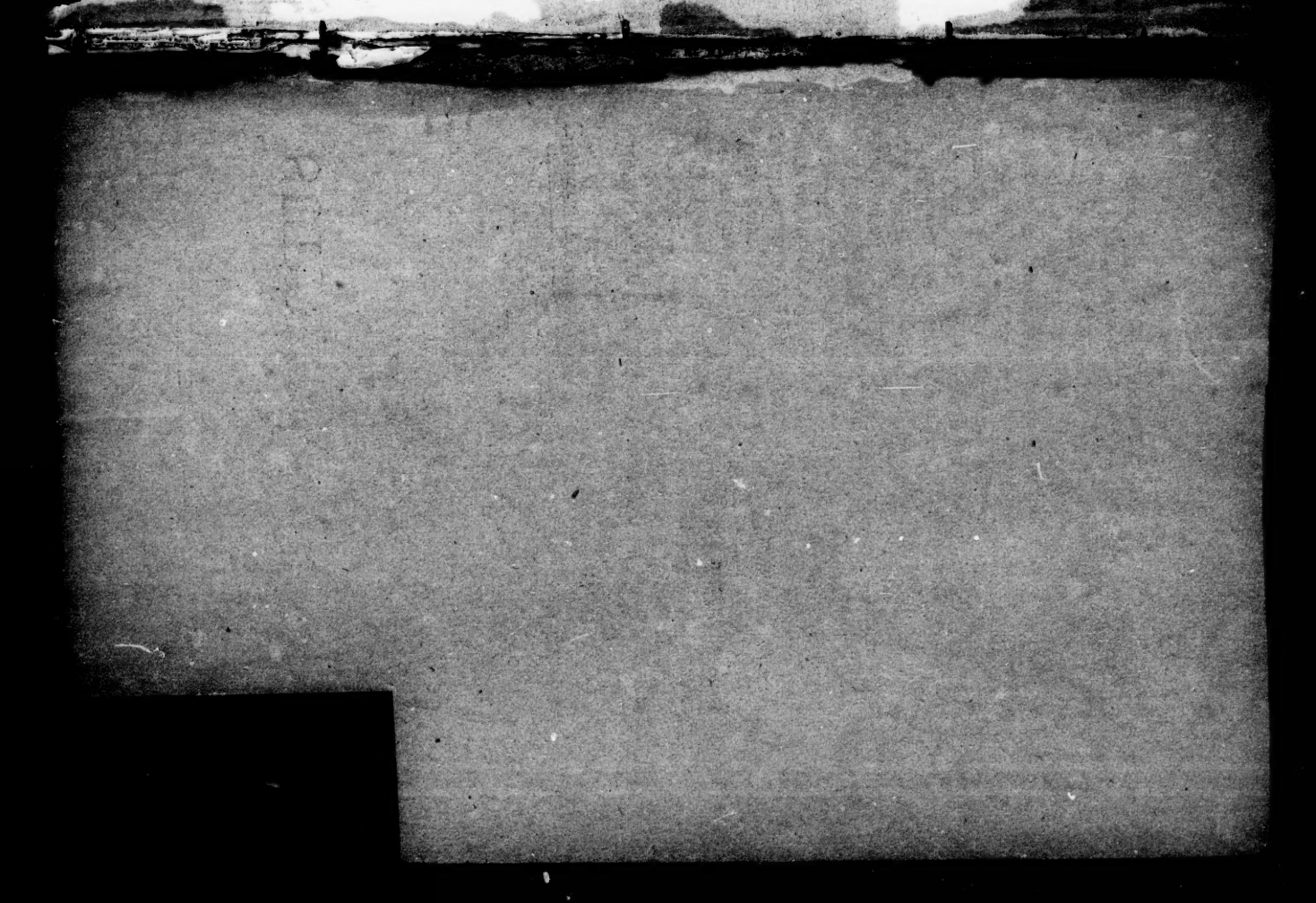
Appeal from the Circuit Court of the United States for the Northern District of New York.

BRIEF OF COUNSEL FOR APPELLANTS.

E. R. Hoar &

H. E. SICKELS, *for Appellants.*

BUFFALO:
PRINTING HOUSE OF MATTHEWS & WARREN.
Office of the "Commercial Advertiser."
1874.



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IN EQUITY.

DENNIS G. LITTLEFIELD and IRA JAGGER, appellants, *agst.* JOHN S. PERRY, trustee and executor of MARY J. PERRY, deceased.	No. 307.

This is an appeal from a final decree of the circuit court of the United States, for the northern district of New York, granted on the nineteenth day of March, and entered on the eighteenth day of April, eighteen hundred and seventy-two, overruling appellant's exceptions to a master's report, and confirming the report, and decreeing that defendants (appellants) pay to complainant sixty-one thousand four hundred and eighty-six dollars and thirty-seven cents. (Page 196.)

This action was brought to restrain the appellants from making and using within the States of New York and Connecticut, stoves, embracing certain improvements covered and secured by various letters patent, granted to Dennis G. Littlefield, one of the appellants, the complainant claiming an exclusive right to make and vend stoves embracing such improvements. The bill also prayed for an accounting and payment of all the gains and profits made by the appellants by making, using and

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vending, within the said two States, stoves embracing the improvements of the description and character described in said letters patent; and also asked, in substance, for a specific performance of a contract under which complainant claimed such limited exclusive right.

ABSTRACT OF THE CASE.

Two bills have been filed in this action. The original bill, and a bill of revivor and supplement. The original bill was filed in August, eighteen hundred and sixty-two, Mary J. Perry being the complainant. (Page 3, 31.)

It alleged in substance (page 3, fol. 11) that

The parties were all residents of the city and county of Albany and State of New York, and citizens of said State, that one of the defendants, Dennis G. Littlefield, "was the true, original and first inventor of a certain new and useful improvement in stoves;" "that on the fifteenth day of April, eighteen hundred and fifty-one, letters patent of the United States" "were issued to him therefor" * * * .

(The following are the drawings of said patent, which appear in the record, page 200:)

Fig. 1.

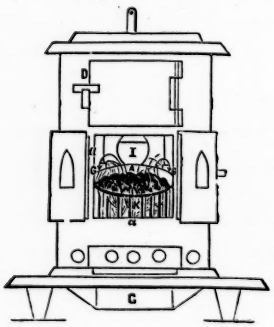


Fig. 2.

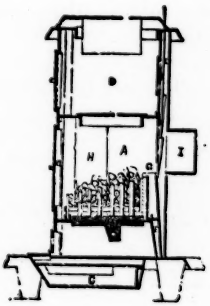


Fig. 3.

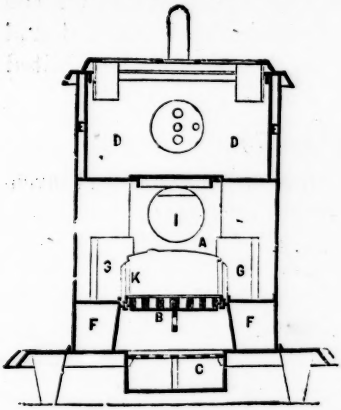
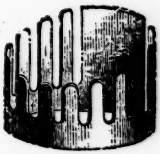


Fig. 4.



Said patent is set out (pages 3, 5). Showing it to have been granted for a certain "improvement in cooking stoves" (page 3, fol. 12); the claim as set forth therein was as follows (fol. 15):

"My improvements, and what I claim, consists in the peculiar arrangement or manner of combining the fire-place, the descending and diving flues, the ash-pit, the lateral chambers, the ascending flues, the oven or air heating chamber, and its surrounding flue space, all as represented in the drawings."

The bill further alleges (page 5, fol. 16):

* * * "That the said Dennis G. Littlefield," * * * "had invented an improvement of the invention thereby secured, which consisted in combining with the grated pot of the improved stove covered by said letters patent, a contrivance called a 'Supplying Cylinder,' for which invention the said Dennis G. Littlefield made applica-

tion for a patent, and for that purpose, on the thirtieth day of December, eighteen hundred and fifty-two, filed in the Patent Office of the United States, his specification and claim therefor."

Setting it out. (Pages 6 and 7.)

(The following are the drawings of this alleged invention which appear in the record, page 200.)

Fig. 1. 2.

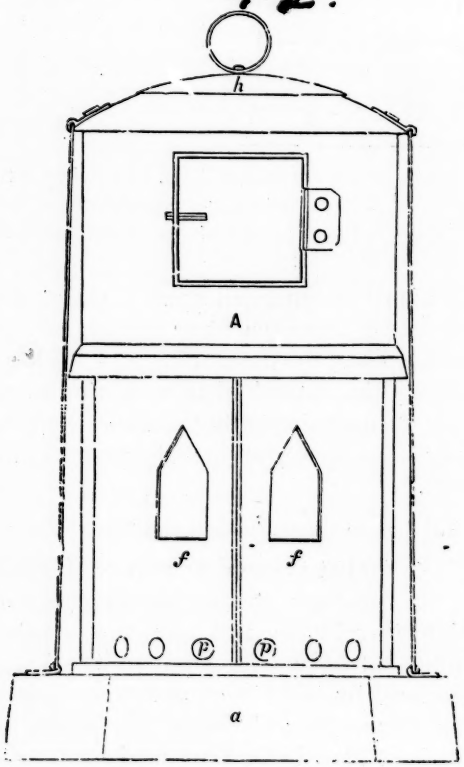


Fig. 1

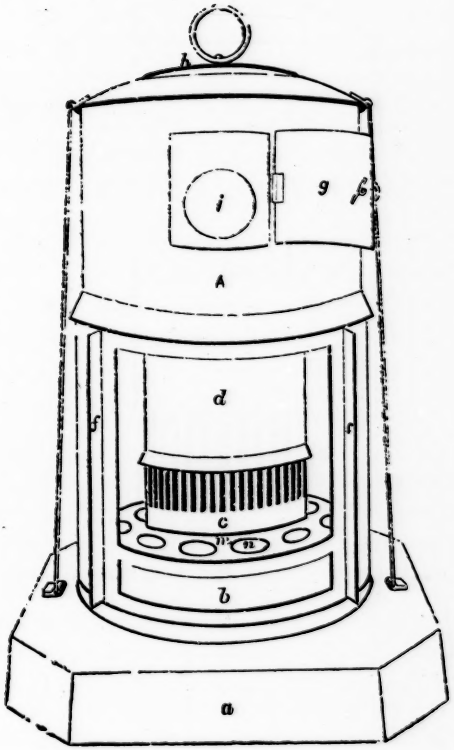
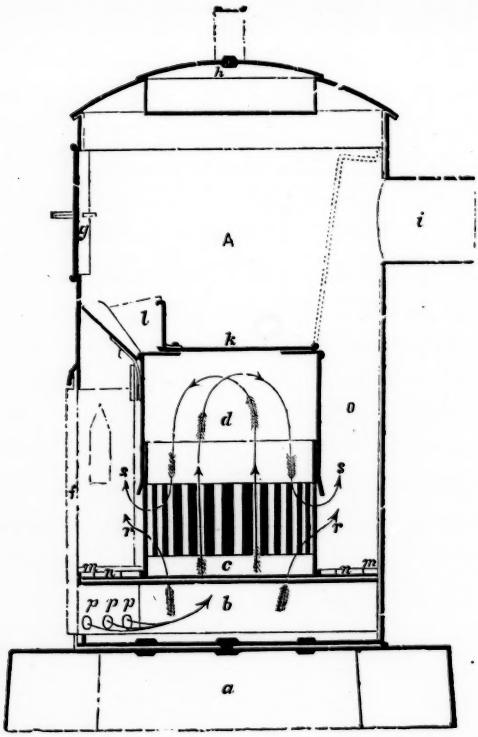


Fig. 3.



"Modifications of the same plan." (Fol. 17.)

Fig. 4.

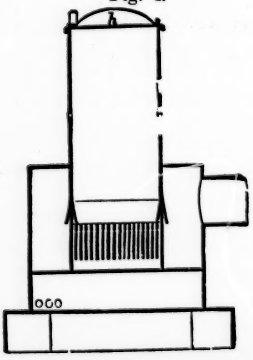
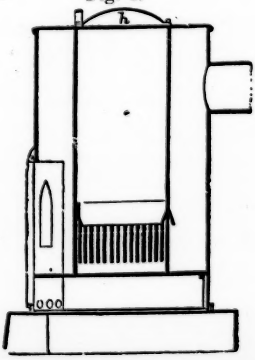


Fig. 5.



The substance of the proposed claim as therein stated (page 7, fols. 18 and 19) is as follows:

"With regard to coal stoves and furnaces, it is obvious that my invention may be carried out in a variety of ways, all essentially the same in principle, but the above described construction and modification are those which I prefer.

"I do not, therefore, limit myself to the precise arrangement of parts described above, but what I claim and desire to secure by letters patent is, the exterior stove cylinder A, the reservoir D, and the fire-pot C, or their equivalents, arranged and operating in the manner substantially as herein set forth, for the purpose of economizing and burning the gases generated during the combustion of anthracite or other coals."

It will be perceived that this supposed "invention," had it been new, could not, properly, have been regarded as an improvement in the former invention; for the reason, that it was in idea, and principle, entirely different; the former being a combination, making up a common surface burning stove, igniting, when in operation, all the fuel it contained, the patentee claiming no new elements or devices, while the latter was for a certain alleged newly invented part of a stove, or furnace (the reservoir or magazine for reserve fuel), belonging to that class known as magazine, or self-feeding stoves and furnaces, which burn from the base only, and do not ignite all the fuel they contain at once, but only as it settles and feeds down from the reservoir to the fire-place.

The bill then alleges (page 7, fol. 19), that "negotiations were thereupon had between the said Littlefield" and the firm of "Treadwell & Perry,"

"which resulted in a conveyance and contract between the said parties, made and executed on the 5th day of April, 1853." This agreement, which was in two parts, was offered in evidence (exhibit S., pp. 549–553), and is in the words following, to wit:" (Set out in the bill, pages 8, 11.)

Record fol. 980. "This agreement, made this fifth day of April, one thousand eight hundred and fifty-three, between Dennis G. Littlefield, of the city of Lowell and State of Massachusetts, of the first part, and William B. Treadwell and John S. Perry, of the city and county of Albany and State of New York, of the second part, witnesseth:

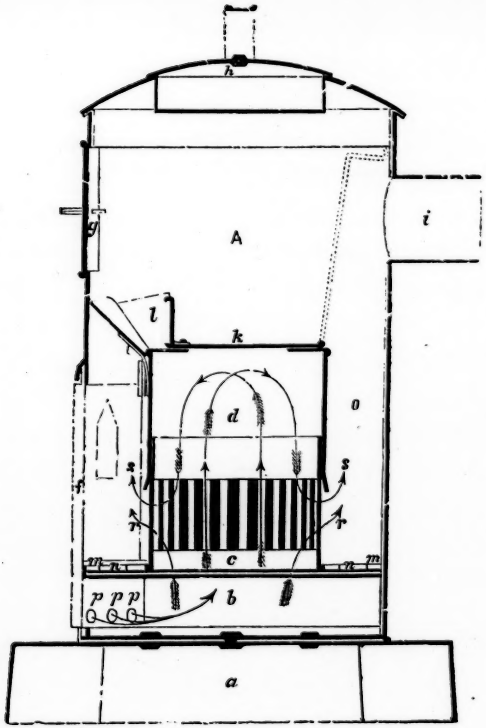
"Whereas, letters patent of the United States have been granted to, and are now held by, the said party of the first part, for a coal burner so constructed as to produce combustion of the inflammable gases of anthracite coal, which letters patent bear date on or about the 15th day of April, 1851. And whereas, the said party of the first part has made application to the Patent Office, at Washington, for letters patent, securing to him a certain improvement in the invention so as aforesaid patented by him, and said application is now pending. Now, therefore, the said party of the

Fol. 981. first part, for and in consideration of one dollar to him in hand paid by said parties of the second part, and of the agreements herein contained on the part of said parties of the second part, and of the agreements contained in a certain agreement this day executed between the parties hereto, and bearing even date herewith, hath and by these presents, doth assign and transfer to the said par-

ties of the second part, their executors, administrators and assigns, all the right, title and interest which the said party of the first part now has, or can or may hereafter have in or to the aforesaid inventions, improvement and patent, or the patent or patents that may be granted for said inventions, or any improvements therein, and on any extension or extensions thereof within and throughout the district and territory embraced within the States of New York and Connecticut, for and during the term for which the aforesaid letters patent were granted, and the terms for which any patent for the aforesaid improvement, and any other improvement or improvements thereof, or extensions for or of either thereof may be granted either to the said party of the first part, or his heirs, executors, administrators or assigns. And the said party of the first part, doth hereby for himself, his heirs, executors and administrators, guaranty to the said parties of the second part, the full and uninterrupted enjoyment of the use and right to use, to make, construct, and to vend to others to use the inventions, improvements and patents aforesaid during the terms aforesaid as against all other persons whomsoever within the district or territory aforesaid. F.1.982.

"And the said parties of the second part hereby agrees to pay unto the said party of the first part for the right and interest hereby assigned and conveyed, provided, and as long as said party of the first part shall well and faithfully keep and perform all the agreements herein, and in the aforesaid agreement this day executed, between

Fig. 3.



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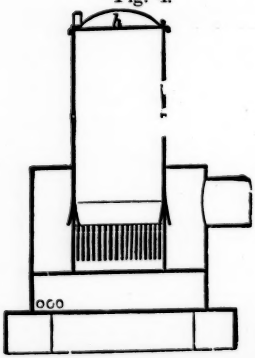

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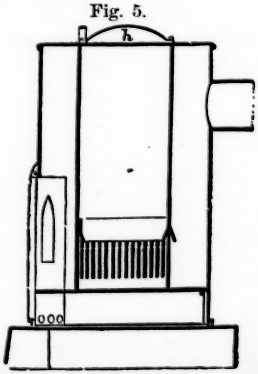

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ties of the second part, their executors, administrators and assigns, all the right, title and interest which the said party of the first part now has, or can or may hereafter have in or to the aforesaid inventions, improvement and patent, or the patent or patents that may be granted for said inventions, or any improvements therein, and on any extension or extensions thereof within and throughout the district and territory embraced within the States of New York and Connecticut, for and during the term for which the aforesaid letters patent were granted, and the terms for which any patent for the aforesaid improvement, and any other improvement or improvements thereof, or extensions for or of either thereof may be granted either to the said party of the first part, or his heirs, executors, administrators or assigns. And the said party F. 1. 982. of the first part, doth hereby for himself, his heirs, executors and administrators, guaranty to the said parties of the second part, the full and uninterrupted enjoyment of the use and right to use, to make, construct, and to vend to others to use the inventions, improvements and patents aforesaid during the terms aforesaid as against all other persons whomsoever within the district or territory aforesaid.

"And the said parties of the second part hereby agrees to pay unto the said party of the first part for the right and interest hereby assigned and conveyed, provided, and as long as said party of the first part shall well and faithfully keep and perform all the agreements herein, and in the aforesaid agreement this day executed, between

the parties hereto, the sum of fifty cents on each and every stove or coal burner embracing said inventions and improvements hereby assigned, which shall be sold by said parties of the second part after they shall have sold fifteen hundred of
Fol.983. said stoves or coal burners, such payments to be made at the times and in the manner particularly specified in the aforesaid agreement this day executed between the parties hereto.

"It is expressly understood and agreed between the said parties, that in case said party of the first part shall well and faithfully keep and perform all the agreements herein and in the aforesaid agreement, bearing even date herewith contained on his part, and the said parties of the second part, their executors, administrators and assigns, shall, without just cause, refuse, or shall neglect to make and sell said coal burners to such extent as the demand therefor shall reasonably warrant and require, after reasonable notice shall be given to them by said party of the first part, requiring them so to make and sell the same, that this assignment and transfer shall thereafter be void and of no effect, and all the rights and interests herein and hereby conveyed shall thereupon revert to the
Fol.984. said party of the first part, his executors, administrators and assigns. In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

"D. G. LITTLEFIELD. [L. S.]
"TREADWELL & PERRY. [L. S.]

"Sealed and delivered in presence of
"JOHN NEWLAND,
"GEORGE H. RUDD."

"This agreement, made this fifth day of April, Record fol. 971.
one thousand eight hundred and fifty-three, between Dennis G. Littlefield, of the city of Lowell, and State of Massachusetts, of the first part, and William B. Treadwell and John S. Perry, of the city and county of Albany and State of New York, of the second part, witnesseth: Whereas, the said party of the first part hath agreed to sell, assign and transfer unto said parties of the second part all the right, title and interest which said party of the first part now has, or can or may hereafter have, in or to certain letters patent of the United States, granted to him on or about the fifteenth day of April, eighteen hundred and fifty-one, and the invention thereby patented, and to a certain improvement thereon, an application for a patent for which is now pending, and to any and all extensions thereof within the States of New York and Connecticut, upon certain conditions and stipulations. And whereas said party of the first part is now indebted to the said parties of the second part in about the sum of fifteen hundred dollars, and it is understood and agreed between Fol. 972.
the parties hereto, that the premium of fifty cents upon each stove embracing said invention and improvements of said party of the first part, which shall be sold by said parties of the second part, shall be retained by them until they have sold fifteen hundred of said stoves, and applied upon the aforesaid indebtedness of said party of the first part to them. Now in consideration of the premises, the said parties to this agreement hereby mutually agree to and with each other as follows, to wit:

"The said party of the first part hereby agrees:

"*First.* That in case any suit or proceeding shall be commenced against the said parties of the second part, or any persons holding under them, affecting the validity of said letters patent, or either of them, or for violating any previous patent by the use and enjoyment of the rights, interests and privileges conveyed to said parties of the second part, by an assignment this day made to them by said party of the first part, or any alleged infringement of any other patent, he will, upon
Fol.973. notice in writing being given to him by said parties of the second part or their assigns, of such suit or proceeding, assume and conduct, at his own cost and charge, the defense against all such suits and proceedings, and keep and save entirely harmless and indemnified the said parties of the second part, their executors, administrators and assigns, of and from all damages, costs and expenses on account of the same; and further, that he will, whenever required by said parties of the second part or their assigns, sue any and all persons who shall infringe or violate within the States of New York or Connecticut the said patent, or any patent or patents which may hereafter be obtained in respect to the subject-matter thereof, or of either of the same, in his own name or otherwise, but at his own cost or charge, and shall conduct the same for the use and benefit of said parties of the second part, their executors, administrators and assigns; and he further agrees, that in case the said letters patent already granted or any patents which may hereafter be obtained by him as aforesaid for

the subject-matter thereof, shall be adjudged invalid so as to deprive the said parties of the Fol. 974
second part of the use and enjoyment of the rights and interests conveyed by the aforesaid assignment; that the agreements therein and herein contained on the part of said parties of the second part shall thereupon become void and of no further effect as against them or their assigns.

"*Second.* That he will furnish to the said parties of the second part before the first day of August next, at the cost price thereof, at the furnace of said parties of the second part, undressed cast-iron patterns for four several sizes of the coal burner, patented in and by the aforesaid letters patent, and embracing all the improvements therein, for which letters patent shall then have been secured, suitable to mould and cast from, and that he also will furnish at the place and price aforesaid, within a reasonable time after letters patent have been secured by him therefor, undressed cast-iron patterns of the several sizes of all improvements upon said coal burners, which shall be made or invented by him.

"*Third.* That he will pay the balance of the Fol. 975
said indebtedness to said parties of the second part, over and above the said sum of seven hundred and fifty dollars, in monthly installments from this date, of not less than one hundred dollars.

"The said parties of the second part hereby agree:

"*First.* That so long as the said party of the first part shall well and faithfully keep and per-

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Fol.973. notice in writing being given to him by said parties of the second part or their assigns, of such suit or proceeding, assume and conduct, at his own cost and charge, the defense against all such suits and proceedings, and keep and save entirely harmless and indemnified the said parties of the second part, their executors, administrators and assigns, of and from all damages, costs and expenses on account of the same; and further, that he will, whenever required by said parties of the second part or their assigns, sue any and all persons who shall infringe or violate within the States of New York or Connecticut the said patent, or any patent or patents which may hereafter be obtained in respect to the subject-matter thereof, or of either of the same, in his own name or otherwise, but at his own cost or charge, and shall conduct the same for the use and benefit of said parties of the second part, their executors, administrators and assigns; and he further agrees, that in case the said letters patent already granted or any patents which may hereafter be obtained by him as aforesaid for

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"*Second.* That he will furnish to the said parties of the second part before the first day of August next, at the cost price thereof, at the furnace of said parties of the second part, undressed cast-iron patterns for four several sizes of the coal burner, patented in and by the aforesaid letters patent, and embracing all the improvements therein, for which letters patent shall then have been secured, suitable to mould and cast from, and that he also will furnish at the place and price aforesaid, within a reasonable time after letters patent have been secured by him therefor, undressed cast-iron patterns of the several sizes of all improvements upon said coal burners, which shall be made or invented by him.

"*Third.* That he will pay the balance of the Fol. 975
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"The said parties of the second part hereby agree:

"*First.* That so long as the said party of the first part shall well and faithfully keep and per-

form all the agreements herein, and in said assignment bearing even date herewith contained on his part, the premium of fifty cents upon each stove or coal burner embracing the aforesaid inventions and improvements, which shall be sold by them, shall be retained and applied by them toward the payment of the said indebtedness of said party of the first part to them, to the extent and amount of seven hundred and fifty dollars, and that after such amount shall have been thus paid they will pay to said party of the first part, his executors, administrators or assigns, the premium or sum of fifty cents on each and every of said stoves or coal burners which shall thereafter be sold by them; that they will
Fol. 97 keep a just and true account of all sales of said stoves or burners, of the names of the purchasers, and the places of their residence respectively, which shall be open at all proper and reasonable times at their counting-room, to the examination of the said party of the first part or his authorized agent, and that a full and perfect settlement of and for the premiums on said sales shall be made by them or their assigns with said party of the first part or his agent, at their counting-room, in the city of Albany, on the first day of April in each and every year hereafter.

"*Second.* That they will also pay, in the manner and at the times aforesaid, the sum or premium of fifty cents, upon every stove or burner, furnace, range, oven or heater of whatever kind or description that they may originate or construct upon the principle of the coal burner so patented as

aforesaid, by said party of the first part, after patterns of their own design or contrivance, it being, however, hereby expressly understood and agreed by said parties of the second part that nothing herein or in said assignment contained shall give Fol. 977
to them the right to use or apply the principle of said coal burner to furnaces that are used or erected in the cellars or basements of houses, for the purpose of heating several rooms or larger part of a dwelling-house, the same being intended to be reserved by said party of the first part.

"*Third.* That they will, in case the said party of the first part shall well and truly keep and perform all the agreements on his part herein and in said assignment contained, manufacture and use all reasonable efforts to sell so many of said stoves or burners as the demand therefor will reasonably warrant and require; and that in case they or their assigns shall, without just cause, refuse, or after reasonable notice from said party of the first part, shall neglect to manufacture or sell said stoves or burners to such extent as aforesaid, then that the aforesaid assignment shall become inoperative and void, and this agreement shall cease and be of no further effect. But in that event, it is Fol. 978
expressly understood and agreed, that in case the said indebtedness of said party of the first part shall not then have been fully paid or satisfied to said parties of the second part, the same shall thereupon be at once due and payable, and that the payment thereof may be required by them from said party of the first part; provided, how-

ever, that such refusal or neglect shall occur for the reason that said stoves or burners cannot be sold by said parties of the second part on account of some practical defect in the principle thereof.

"In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

"DENNIS G. LITTLEFIELD. [L.S.]
"TREADWELL & PERRY. [L. S.]

"Sealed and delivered in presence of
"GEORGE H. RUDD."

The bill then after alleging performance of this contract by said firm, further alleges (page 12, fol. 27), "that said Dennis G. Littlefield, on or about the twenty-second day of July, eighteen hundred and fifty-three," "withdrew from the Patent Office of the United States the application, filed on the thirtieth day of December, eighteen hundred and fifty-two; and on the same day filed a new application for a patent of substantially the same character, on which, on or about the twenty-fourth day of January, eighteen hundred and fifty-four, letters patent of the United States were issued, which are set forth."

It is not alleged that this patent embraced improvements upon the invention secured by the patent of 1851, mentioned in the agreement, or that they could be applied to such a stove.

(The following are drawings of this patent shown in the Record, page 200.)

Fig. 1.

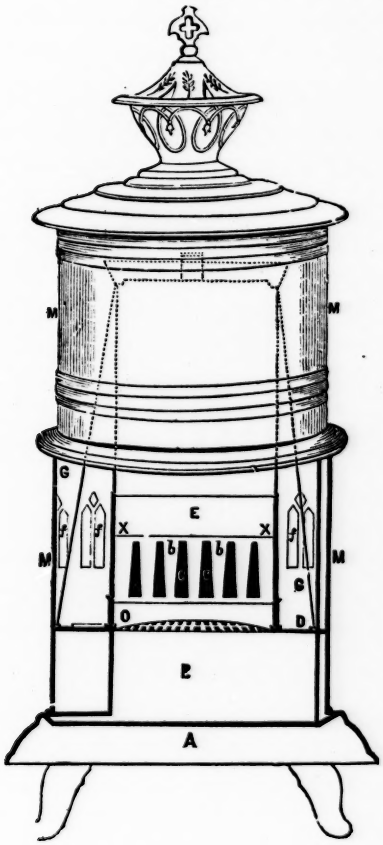
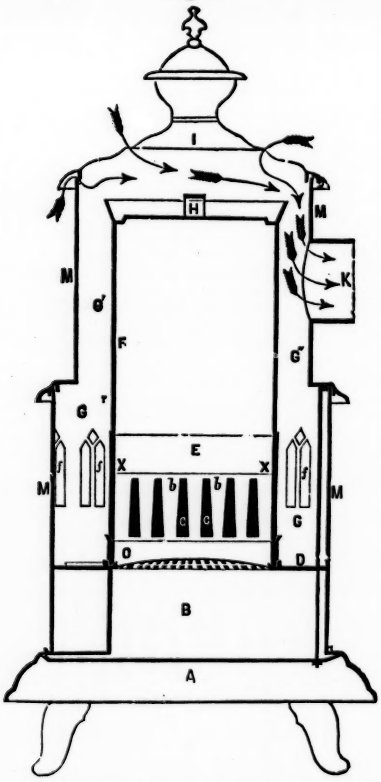


Fig. 2.



After a description of the working and effect of this invention, the claim reads as follows (page 16, fol. 34):

"Thus far my invention has been described in its applicability to stoves for heating purposes only. I do not, however, intend to limit myself to this use of it alone, but to employ it wherever it may be advantageously applied, particularly to house furnaces, cooking ranges, steamboat boilers, etc. * * *

"What I claim and desire to secure by letters patent is the cylindrical grated fire pot E, in combination with the gas receptacle F, constructed and

operated in the manner substantially as described, by which I am enabled to burn the gaseous and more inflammable elements of the coal in immediate contact with its more refractory portions, and thus insure a complete combustion of them both."

The bill then alleges (fol. 35–36,) performance of this agreement by said firm by manufacturing a

Stove, embracing the invention patented January 24, 1854 (for above drawing of same, see page 200), alleging also that "new patterns were completed, and new stoves manufactured therefrom" by said firm, which was "called by them, 'The Brilliant,'"

(for above drawing of same see page 200), and

that "the said Treadwell & Perry continued to manufacture and sell the same, * * * * * until about the first of September, 1860, and since that period the same has been manufactured and sold by parties who have succeeded to the rights of the said Treadwell & Perry."

The bill further alleges (page 17, fol. 37) that:

* * * "Prior to the twenty-fifth day of June, eighteen hundred and sixty-one, the said Dennis G. Littlefield alleged that he had invented a new and useful improved fire pot for coal stoves, not known or used before," "and made application for letters patent therefor, and that on the twenty-fifth day of June, eighteen hundred and sixty-one, letters patent of the United States (with accompanying papers) for his said invention, were issued to the said Dennis G. Littlefield."

Then follows a copy of said patent. (Page 18–19.) It was "for a new and useful improvement in the construction of cylindrical or other formed grated fire pot." It was in substance, substituting a new fire pot, the sides made of bars of soap stone or fire clay, or of other non-combustible material, and fitting into socket holes in iron rings forming the upper and lower sections, and combined with the supplying cylindar of a "base-burning stove."

(The following are the drawings of this patent, see page 201:)

Fig. 1.

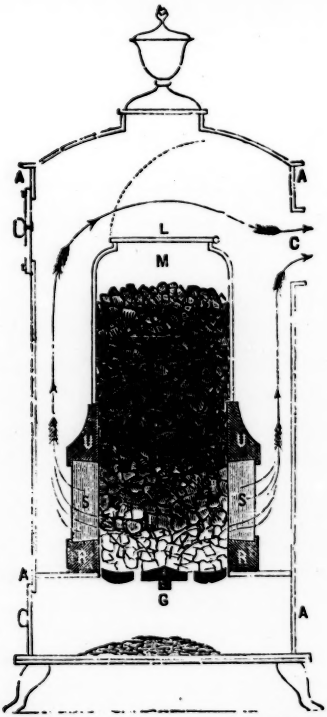


Fig. 2.

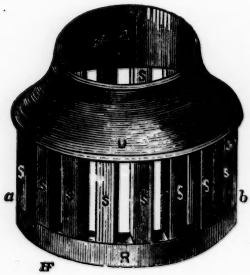
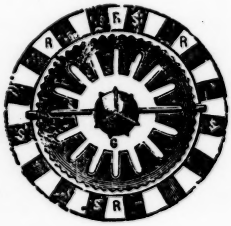


Fig. 3.



There is no allegation that this invention was an improvement applicable to either of the before-mentioned constructions, or that it was in any way necessarily connected therewith.

The bill further alleges (page 20, fol. 40), that said Dennis G. Littlefield * * * * "surrendered the letters patent, bearing date the twenty-fourth day of January, eighteen hundred and fifty-four, and afterwards procured the same to be re-issued under date of November nineteenth, eighteen hundred and sixty-one, in two separate and distinct letters patent." Setting them out as reissues No. 132, 133.

The title of the complainant to the above contract is then set forth in the bill in this wise (page 28, fol. 55):

* * * "That on the fifth day ("twenty-fifth" is the correct date. See page 426) of March, eighteen hundred and sixty-two, the said Treadwell & Perry sold, and by instrument in writing duly transferred to George W. Sterling, of Poughkeepsie, in the State of New York, all their interest in and arising out of the contract with said Dennis G. Littlefield, dated April fifth, eighteen hundred and fifty-three, and to the patents and improvements and extensions thereof in the said contract transferred or referred to, and the same was duly recorded in the Patent Office of the United States, on the thirty-first day of May, eighteen hundred and sixty-two, in Liber O^{6}, page ninety-seven of Transfers of Patents."

"That on the seventh day of April, eighteen hundred and sixty-two, the said Treadwell & Perry

duly sold, assigned and transferred to Andrew Dickey, of the city of Albany, all their interest in the aforesaid contract and patents hereinbefore set forth, and the same was duly recorded in the Patent Office of the United States on the twenty-sixth day of June, in Liber P^{6}, page two hundred and seven of Transfers of Patents."

"That on the twenty-sixth day of June, eighteen hundred and sixty-two, the said George W. Sterling, by an instrument in writing, duly reconveyed and transferred to the said Treadwell & Perry, all the interest in the said contract and patents transferred to him on the fifth day of March, eighteen hundred and sixty-two, and the said last-mentioned instrument was recorded in the Patent Office of the United States, on the twenty-sixth day of June, eighteen hundred and sixty-two, in Liber P^{6}, page two hundred and five of Transfers of Patents."

"And afterward, and on the second day of July, eighteen hundred and sixty-two, the said Andrew Dickey duly sold, assigned and transferred unto Mary J. Perry, of the city of Albany and State of New York, your oratrix in this bill of complaint, all the right and interest in the said contract with the said Littlefield, and in the patent and patents therein and hereinbefore referred to and set forth, and the same was duly recorded in the Patent Office of the United States, on the twenty-ninth day of July, eighteen hundred and sixty-two, in Liber P^{6}, page four hundred and forty-one of Transfers of Patents."

Thus, upon the face of this bill is shown a radical defect

in complainant's title; and the proofs do not remedy the defect, but sustain the allegations of the bill. The various transfers appear in the proofs. See assignment from "Wm. B. Treadwell and John S. Perry" to Sterling, Exhibit T (pages 426, 427); assignment from these gentlemen to Dickey, Exhibit W (page 429); assignment from Dickey to Mary J. Perry, Exhibit U (page 427), and assignment by Sterling to "Wm. B. Treadwell and John S. Perry," Exhibit V (page 428).

The complainant claimed, under the assignment from Dickey, who took nothing by the release from Wm. B. Treadwell and John S. Perry to him on the 7th of April, 1862, for the reason that they had previously, on the twenty-fifth day of March, 1862, transferred and assigned said contract and all their right and interest under the same, to Sterling, and Sterling perfected his right by recording the assignment to him, in the patent office, on the 31st May, 1862 (page 427, fol. 805), nearly two months after the date of the pretended assignment to Dickey, which was not recorded until 26th June, 1862 (page 429, fol. 809).

The complainant claimed (p. 28, fol. 56) to be vested under this contract of April 5, 1853, and these various transfers, "with the exclusive right within the territory of the States of New York and Connecticut, to make and vend stoves, embracing the essential features of the stove described in the letters patent of the fifteenth of April, eighteen hundred and fifty-one, of the twenty-fifth day of June, eighteen hundred and sixty-one, of the twenty-fourth day of January, eighteen hundred and fifty-four, and of the reissues thereof, under date of November nineteenth, eighteen hundred and sixty-one." And this without disclosing that "Treadwell & Perry,"

the original contracting parties, ever acquired any right or interest in the two last mentioned patents (of 1854 and 1861) or the re-issues thereof, by virtue of the agreement of April 5th, 1853.

The bill then after alleging (page 29, fol. 57,) that "the said defendants have and do infringe upon and violate the exclusive privileges of making and vending the stoves aforesaid, and after setting forth certain interrogatories (page 30), concluded with the prayer." * * *

"That the said Dennis G. Littlefield and Ira Jagger may be decreed to answer the premises, and to account with your oratrix for, and to pay to her all such gains and profits as have accrued to the defendants, and such loss as has been sustained by your oratrix, from making, using or vending to others to be used, within the States aforesaid, stoves of the description aforesaid. And that the said defendants may be restrained by a writ of injunction issuing out of and under the seal of this honorable court, from using, or in any way, within the States of New York and Connecticut, putting in practice the improvement in stoves or invention described in or covered by the said several letters patent, or either of them, and from making or causing to be made or vended, or causing to be vended to others to use, stoves of the description aforesaid, within the territory aforesaid, and from all violations of the exclusive rights of your oratrix to the said inventions and improvements, within the territory aforesaid."

And that it be decreed (fol. 60) that the plaintiff was "vested at law and in equity with the

exclusive right and privilege, within the States of New York and Connecticut, of making and vending, and causing to be made and vended, stoves of the character and description mentioned in and covered by said letters patent."

Both defendants answered, among other things denying (as quoted in the first opinion given in this cause, page 33, fol. 70) that any rights had been 'legally assigned and transferred to Treadwell & Perry, and from Treadwell & Perry through various parties to the complainant, Mary J. Perry.' A provisional injunction was moved for and granted on the twenty-ninth of November, eighteen hundred and sixty-two. An opinion was written thereon, which contains the following statements:

"The bill in this cause was filed by the plaintiff for the infringement of certain patents * * * of which she claims the exclusive right, by assignment, to the territories of States of New York and Connecticut."

"The bill sets out various assignments deducing a title from the patentee, to the exclusive right to the use of the patents for the territories above mentioned to the complainant." (Page 33.)

After the granting of this injunction, the defendants were permitted to file amended answers; and, after having done so, they made a motion to dismiss this bill, the grounds of which appear in the opinion, which motion was denied in October, eighteen hundred and sixty-three, the court writing the following opinion (page 76, fol. 159).

"NELSON, C. J. We are satisfied that the contract, or agreement between D. G. L. and Tread-

well & Perry, fifth April, eighteen hundred and fifty-three, vested in them a legal title to the patent of fifteenth April, eighteen hundred and fifty-one, and an equitable title to the improvements for which an application was then pending for a patent, which afford sufficient ground for the maintenance of this suit in equity for an infringement of the same, and that the proper remedy is in this court. The complainant stands in the place of T. & P.

"Motion to dismiss the bill denied."

It will be perceived that these opinions gave the complainant a position in a Circuit Court of the United States which, by the allegations of this bill, she had not sought to occupy, viz.: The position of a sole assignee of the patent of April fifteenth, eighteen hundred and fifty-one, holding also an equitable title to the improvements specified in the agreement.

After the rendition of this opinion, the defendants were again permitted to file amended answers, which they did, and the cause was at issue, so that plaintiff commenced taking proofs on the twenty-second day of February, eighteen hundred and sixty-four (page 198), and continued to do so from time to time until June, eighteen hundred and sixty-four (pages 386, 101), when the plaintiff died, and the cause was abated.

Thus the matter rested until the month of December, eighteen hundred and sixty-four, when Mr. John S. Perry asked leave to revive the cause, in his name, as trustee and executor, under the last will and testament of Mary J. Perry; and that he be permitted to file a bill, in the nature of a bill of revivor and supplement. This motion was granted December twenty-seventh, eighteen hundred and sixty-four; the order also permitted the defendants to answer the original bill anew. (Page 99.)

In pursuance of which, the defendants so answered the original bill. (Pages 160 to 177.)

The discarded answers were not introduced among the proofs; therefore, were not before the court at the final hearing of this cause, and are not to be considered here, notwithstanding they are included in this record, excepting perchance that portion of the original answer quoted in the opinion, on granting the injunction in 1862. (Page 33, fol. 69.)

Answer to the original bill.

The defendants answered separately: Admitting the granting of letters patent April 15th, 1851, for "improvement in cooking stoves;" also, that in 1852, Littlefield completed a device which was supposed to be a valuable "invention," for which, on the thirtieth day of December, 1852, he made application for a patent; but denied "that said alleged invention was in any manner an improvement in the aforesaid patented invention." (Page 161, fol. 348.)

Littlefield admits (fol. 349) the negotiation with said firm, which resulted in the agreement, executed in two parts, set out in the bill, but "avers (page 162, fol. 350) that in reserving to himself the right to bring suits under said patent (page 549, fol. 973) was to protect his reserved right (page 551), as well as the said Treadwell & Perry, in the manufacture of said stoves;" also, "that a fair construction of said grant and supplementary agreement * * * * gave to the said Treadwell & Perry no legal right to convey a title to said patent of April 15, 1851." Also (fol. 351) "that the said grant and supplementary agreement did not convey any rights under the said application of December 30, 1852, * * * * for the reason * * * * that nothing therein contained was applicable to, or was an improvement in the invention patented April 15, 1851"; also, that subsequent to the execution of this agreement, "the same was so understood by the parties thereto; that the same did not

reach any of this defendant's improvements, excepting such as were applicable to the said invention patented April 15, 1851." Admits (fol. 352) that "on or about the 22d day of July, 1853, he did withdraw from the patent office the aforesaid application for a patent," but alleged in substance (page 163, fol. 352) that said application was abandoned and withdrawn, it being rejected by the commissioner, and the applicant having become satisfied that the invention thereby sought to be patented had been previously patented by an English patentee, "Stephen Joyce, in 1840," and appeared in other stoves.

"Admits (fol. 353) that on the same day he abandoned said application * * * he filed with the commissioner an application * * *; but denies that said last mentioned application was of the same character as the one that was abandoned." Admits (page 164, fol. 353) the granting of "letters patent bearing date January 24th, 1854;" but denies (fol. 354) that it "was issued or regarded, or was an improvement in the invention patented April 15, 1851." Defendant Jagger denied (page 175, fol. 381) that the "patent of January 24th, 1854, * * * was either an improvement in the * * * invention patented April 15th, 1851, or was of substantially the same character as the alleged invention, described in the application of December 30th, 1852." Denied that said "Treadwell & Perry, or this complainant," as against him, "ever had any right, title, or interest in the said patent of January 24th, 1854."

Littlefield denied (fol. 354) "that such firm (as 'Treadwell & Perry') was in existence subsequent to the month of June, 1854." Denied (page 167, fol. 359) that said "Treadwell & Perry" continued to manufacture stoves up "to Sept. 1st, 1860." Denied (fol. 361) "that there were parties succeeding to the said pretended rights of said Treadwell & Perry * * * * between" Sept. 1st, 1860, and March 25th, 1862." Denied (pages 167–8, fol. 361) "that said Treadwell & Perry have at all times performed the stipulations of said grant and supplementary agreement; or that any other parties have performed such stipulations, as were

required to be kept and performed." Admits (fol. 361) the granting of said patent of June 25, 1861, but denies that it was "applicable to the aforesaid invention patented April 15th, 1851;" while Jagger denies (page 175, fol. 382) that as against him, that this complainant "ever had any right, title, or interest" in said patent. And avers (same folio) "that, prior to engaging in the manufacture under said patents of January 24th, 1854, and June 25th, 1861," that he "made investigation, and found that the title to said patents vested in Littlefield, and that the same were in no manner improvements in the invention patented April 15th, 1851."

Littlefield admits (fol. 362) the reissues of the patent of January 24th, 1854. No. 132 and 133, set out in the bill. Denies (fol. 363) any knowledge of the assignment to Sterling, at the time it was made; or any knowledge of the assignment to Andrew Dickey, and from him to Mary J. Perry, until the bill was placed in the hands of the defendants. "Denies (page 170, fol. 365) that the said Mary J. Perry is vested in law or equity with the exclusive right, or any rights, under any of the patents set forth in her said bill." "Denied (fol. 366) that the said Mary J. Perry had at the time of filing her said bill, caused any stoves to be manufactured, * * * * or, as alleged in her said bill." Admits (page 172, fol. 369) "the manufacture (by defendants) of stoves covered by letters patent of January 24th, 1854, and June 25th, 1861, but avers that said stoves were in no manner an infringement of the said patent of April 15th, 1851, or an improvement in the invention covered or secured by said patent." Admits (page 172, fol. 370) "that certain rights to the said invention and letters patent dated April 15th, 1851, for the States of New York and Connecticut, were conditionally assigned to Treadwell & Perry;" but "denies that the exclusive right was assigned." "And as to the transfers from said Treadwell & Perry, through various parties to this complainant, he says there have been no such trrnsfers with his knowledge, approbation or con-

sent, and therefore * * * * can neither admit nor deny that such transfers have been made." "Insists that complainant be required to prove the same, before they be taken as true."

BILL OF REVIVOR AND SUPPLEMENT. (Page 100–160.)

This new complainant set forth, as supplementary matter, the following re-issues of the patents:

August 26, 1862. The re-issue of November 19, 1861, was surrendered and four separate re-issues procured. (Page 102, fols. 228–239.)

March 3, 1863. Two of the re-issues of August 26, 1862, surrendered and two other re-issues procured. (Page 108, fols. 239–261.)

May 19, 1863. The remaining two re-issues of August 26, 1862, surrendered and re-issues procured. (Page 119, fols. 261–278.)

November 8, 1864 (page 129, fols. 279–298). The re-issues of March 3, May 19, 1863, surrendered and three new re-issues procured.

November 22, 1864 (page 139, fols. 298–302). Some of the re-issues of May 19, 1863, surrendered and a re-issue thereof procured.

(The following are the drawings of these reissue patents. See page 201.)

Fig. 1.

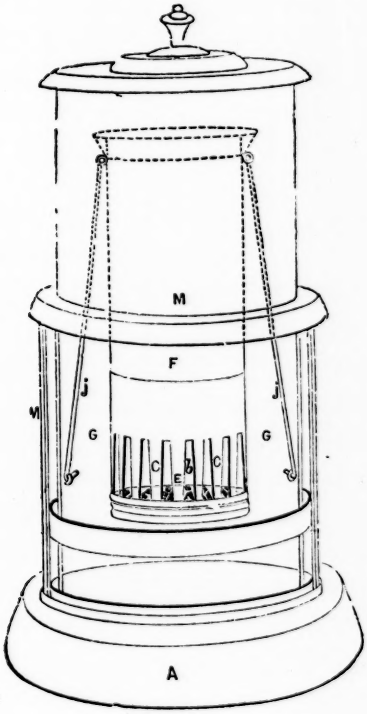
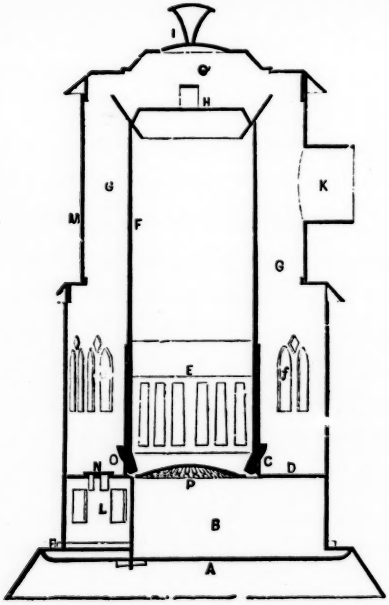


Fig. 2.



The claims in the last set of reissues, *i. e.*, the three of November 8, 1864, and one of November 22, 1864, into which the patent of 1854 finally culminated, are substantially as follows:

No. 1813 (pages 129 to 134). The inventor disclaims the combination of a fuel-supplying cylinder fire-pot and ash-pit with an enclosing chamber when separated distinctly from the enclosing chamber, but claims "The combination of a fuel-supplying cylinder with a fire-pot when the said supplying cylinder has its cover-opening enclosed within a chamber or space communicating, not only with the outlet from the fire-pot, but also with the exit flue, substantially as herein described, when the case forming said enclosing chamber becomes a part of the stove itself," etc.

No. 1814 (pages 134 to 136). Disclaims intent to make openings in exterior case of stove through which fire may be seen, but claims "the arrangement, adaptation and combination with a fuel-supplying cylinder stove of an illuminating case to the chamber which receives light and the gaseous products of combustion from the burning fuel, when the said case is illuminated by windows or glazed apertures, arranged continuously upon every side or in so much of its surface as may be exposed to view.

No. 1815 (pages 137, 138), claims "First, a fire-pot constructed substantially as described, in combination with a fuel-supplying cylinder having its cover-opening surrounded by a chamber which communicates with the outlet from the fire-pot and also with the flue leading to the chimney when the openings in the fire-pot or outlets therefrom are broadest at the bottom. Second. The combination of a fire-pot, constructed substantially as described with a fuel-supplying cylinder, which has its cover opening surrounded by a chamber which communicates with the outlet from the fire-pot and also with the flue leading to the chimney when the aggregate amount of outlet space from the fire-pot exceeds the amount of inlet."

No. 1823 (pages 139, 140) applies to stoves having a supply reservoir, and consists "in the adaptation of a swinging cover to the top of the stove so as to permit said cover to be swung open on a horizontal plane when necessary to supply fresh coal or to cool the stove." The claim is simply "of a cover so hinged to the top plate of the stove that it may be swung open on a horizontal plane."

The said supplemental bill also sets forth two original patents granted to Mr. Littlefield after the filing of the original bill, which are not alleged to be improvements upon the inventions and patents of 1851, 1854, or 1861, mentioned in the original bill, but to which, however, complainant claimed "the exclusive right and title" (page 141, fol. 302) under the contract of April 5th, 1853, mentioned in the original bill, for the States of New York and Connecticut, viz.:

A patent, No. 37,103, issued December 9, 1862 (page 141, fols. 302–312), which was for a new method of constructing that class of stoves using a supplying cylinder (fol. 303).

(The following are the drawings of this patent. See page 201.)

Fig. 1.

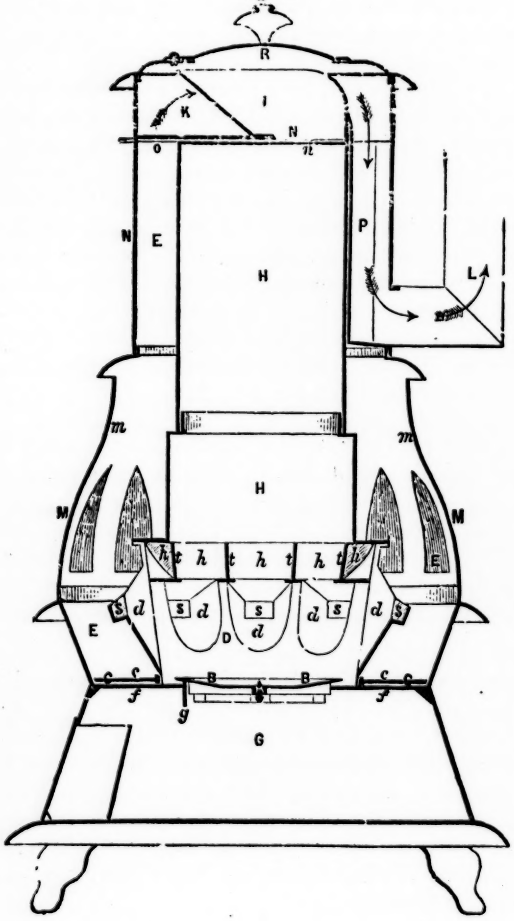


Fig. 2.

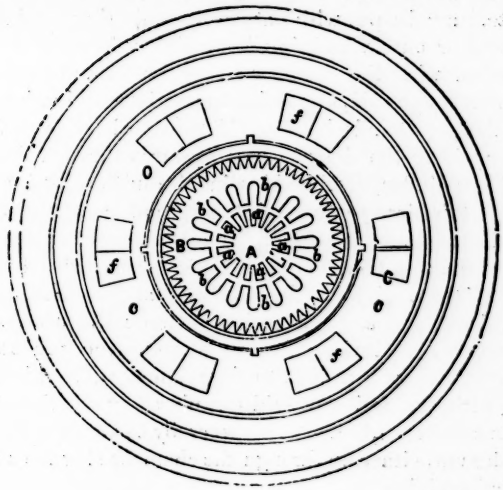


Fig. 3.

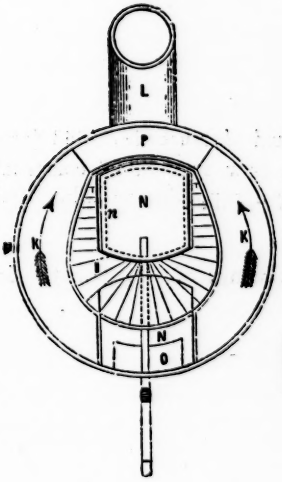


Fig. 4.

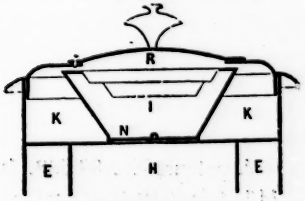
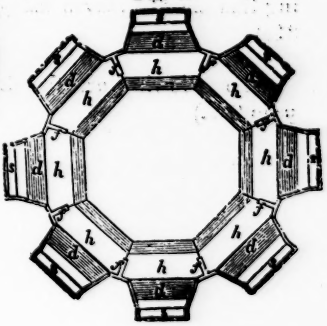


Fig. 5.



The claim (page 146, fol. 311, 312) was for "a mill grate," a "fire-pot with outwardly projecting combustion mouths or outlets opening immediately into and in combination with the chamber E;" "the form and arrangement of the case M, in relation to and in combination with the fire-pot D and chamber E," substantially as set forth, "compelling the draft to pass upwards through the supplying cylinder H, while kindling fire in the stove, * * *" "and this, irrespective of the special construction by which the same is effected," and "the central chamber above the supplying cylinder H, connected with the exit flue;" "the divided flue K, around the chamber I, and forming a communication between the front of the chamber E and the exit flue whereby the products of combustion are conveyed to the chimney without interfering with the action of said chamber;" "also the sliding plate or valve N, * * * whereby the draft is directed at pleasure either up through the chamber E or the supply cylinder H."

A patent, No. 39,582, issued August 18, 1863 (page 146, fols. 312–323), "for a new method of constructing that class of stoves using a supplying cylinder" (fol. 313).

(The following are the drawings of this patent. See page 201.)

Fig. 1.

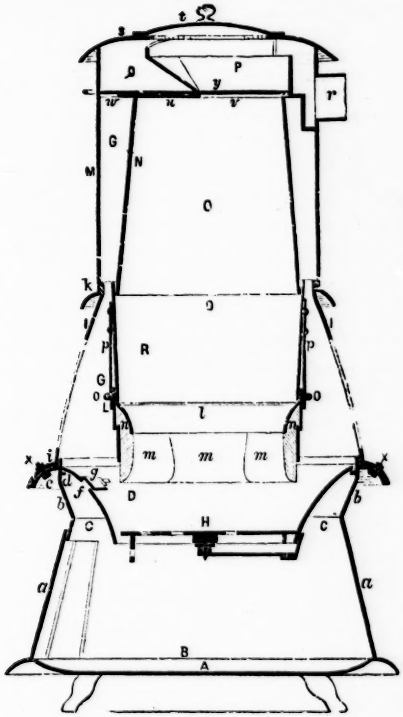
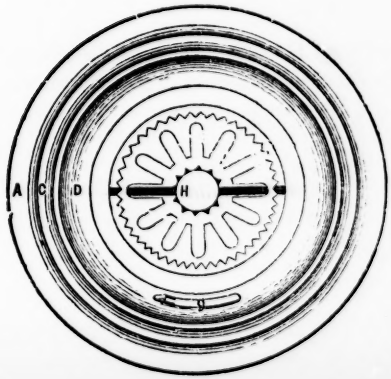


Fig. 2.



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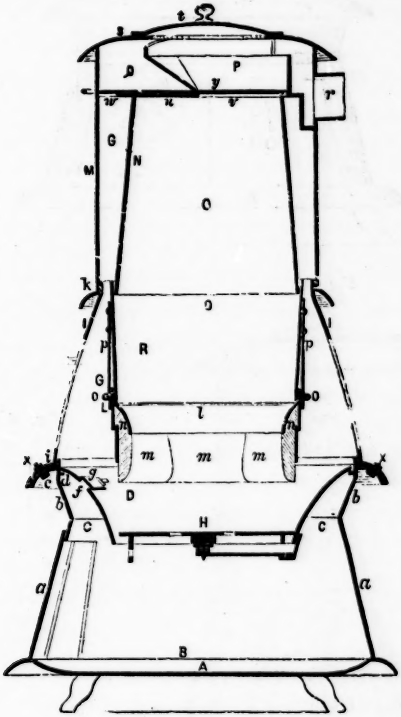


Fig. 2.

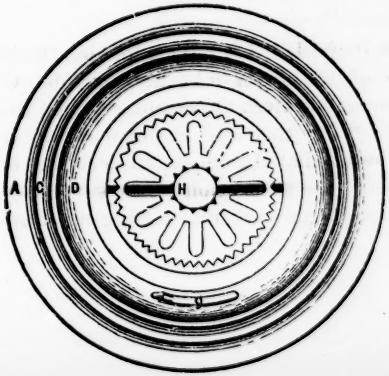


Fig. 3.

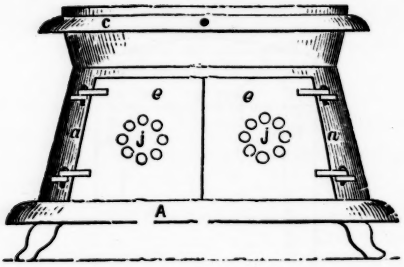


Fig. 4.

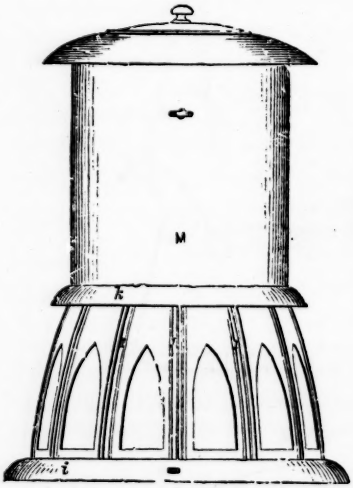
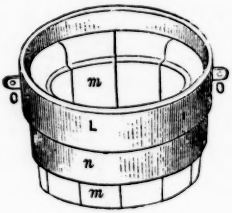


Fig. 5.



The claim (page 152, fol. 323) is for the "suspension or arrangement of the fire-pot or burning chamber C, entirely shut off or separated from the chamber which receives the heat, * * * so that said chamber C may separately receive the heat radiated from the outer surface of the fire-pot," etc., also "the suspension of the supplying cylinder in the combustion and heat transmitting chamber G, above

and separate from the fire-pot, also suspending the soapstone or fire-brick supporting cylinder or section L by means of hasps and eyes, in order that said section may be detached from below," etc.

A re-issue, No. 1594, December 22, 1863, of the patents of August 18, 1863, (page 152, fols. 325-334).

Substantially same as above.

In this supplemental bill (page 157, fol. 335), the complainant assumes, for the first time, the position of a grantee of "the exclusive right and title" within the said two States, to all of the inventions mentioned in both bills, and prays for injunction (fol. 338) restraining the defendants "from using, or in any way within the States of New York and Connecticut, putting in practice the improvement in stoves, or invention or inventions described in or covered by the said several letters patent, or either of them," and following it with a prayer for a decree that he "is vested in law and in equity with the exclusive right and privilege, within the States of New York and Connecticut, of making and vending, and causing to be made and vended, stoves of the character and description mentioned;" alleging (page 158, fol. 335) that "said defendants * * * * have continued, and still continue, to manufacture, for the purpose of vending the same, * * * * great numbers of stoves, embracing all the material and essential features described in and covered by the said letters-patent, and re-issues thereof, as in the said original bill, and in this your orator's supplemental bill, is set forth."

This bill (page 100 to 160) was filed, as also the defendants' answers thereto (page 177 to 184), so that the cause was at issue in March, eighteen hundred and sixty-five.

Answers to the supplemental bill.

The defendants answered separately: admitting all the allegations as to the re-issue of said patents, and as to the granting of the said two new patents, but deny (page 182, fol. 407) that any of the invention patented on the ninth day of December, 1862, was applicable to to the "invention patented April 15th, 1851, or were improvements therein." They deny "that the said Mary J. Perry, by virtue of the agreement of April 5th, 1853, was vested with the 'exclusive right and title' or any other right under the said patent of December 9th, 1862." They deny (fol. 408) as to the patent of August 18th, 1863, that any of the improvements thereby patented, were "improvements in the invention patented April 15, 1851." They deny "that the said Mary J. Perry, by virtue of the said agreement of April 5th, 1853, ever had the 'exclusive right and title,' or any rights whatever, in the said improvements that were patented August 18th, 1863." It was denied (page 183, fol. 408) "that the said Mary J. Perry was ever, or the said John S. Perry, as trustee, etc., is now, vested with the exclusive right and title by virtue of the agreement of April 5th, 1853, for the States of New York and Connecticut, in and to the said letters-patent of April 15th, 1851, and other patents and re-issues thereof mentioned in said original bill, and supplemental bill."

It was denied (fol. 409) that defendants "continued to manufacture and vend * * * * any stove embracing all the material and essential features described in and secured by the said letters-patent, and re-issues thereof, as in the said original bill and supplemental bill set forth; but only

as stated in * * * answer to the said original bill, and employing some of the improvements, patented December 9th, 1862, * * * and August 18th, 1863, * * * never in any instance pretending to manufacture and vend stoves, which might infringe the patent of April 15th, 1851, or any improvement in the invention thereby secured."

"And further answering (page 184, fol. 411), in reply to interrogatory No. 4, defendant (Littlefield) denied "that the said John S. Perry, as trustee, etc., has any right to call for an account from this defendant of his own business, under his own patents," etc.

Immediately after the cause was again at issue, came a notice of a motion "for an attachment as for a contempt of the injunction issued in this cause, and to extend said injunction to all the patents and re-issues mentioned in the bill of revivor and supplement."

This motion was granted, the court giving an opinion reiterating its former conclusions, as follows: (Page 186.)

"The court has heretofore held, that the agreement between Littlefield of the one part, and Treadwell & Perry of the other, dated fifth April, eighteen hundred and fifty-three, vested the latter with the legal title to the patent of April fifteenth, eighteen hundred and fifty-one, and with an equitable title to any and all the improvements then made, or thereafter to be made upon the same; and, further, that the patents of January, eighteen hundred and fifty-four, and of June and

November, eighteen hundred and sixty-one, embodied the principles, and were but improvements, upon the patent of April fifteenth, eighteen hundred and fifty-one, and of the inventions and improvements embraced in the application to the Patent Office for a patent, dated December thirtieth, eighteen hundred and fifty-two, and which is referred to specially in the agreement between the parties. This opinion which was entertained, and upon the strength of which the injunction was issued, is confirmed by further consideration, and after a personal examination of stoves constructed in conformity with the several improvements."

This is the last opinion that was written in this cause.

It appeared by the proofs (pages 200, 201, 389, 390, 398, 402) that the defendants had made and sold:

First: The stove known as the "Morning Glory, number one," employing the combination patented January twenty-fourth, eighteen hundred and fifty-four, as re-issued in November, eighteen hundred and sixty-one, and set out in the original bill, with the fire pot patented June twenty-fifth, eighteen hundred and sixty-one, set out in the original bill.

Second: The "Morning Glory, number two," employing a portion of the invention described in the re-issue patent of January twenty-fourth, eighteen hundred and fifty-four, first set out in the original bill, but as re-issued November eighth, eighteen hundred and sixty-four, and set

forth in the supplemental bill, and a portion of the invention patented December ninth, eighteen hundred and sixty-two, set out in the supplementary bill; and

Third: The "Morning Glory, number three," employing a portion of the invention described in the re-issue patents of January twenty-fourth, eighteen hundred and fifty-four, as re-issued November eighth, eighteen hundred and sixty-four, and set forth in the supplemental bill, together with a portion of the invention patented December ninth, eighteen hundred and sixty-two, and August eighteenth, eighteen hundred and sixty-three, set out in the supplemental bill.

The complainant, having proved precisely what the defendants had admitted in their answers, in the way of making stoves, established that there had not been any infringement of the patent mentioned in the agreement, viz: the patent of April fifteenth, eighteen hundred and fifty-one.

The case was heard, upon the pleadings and proofs, at a regular term of the court at Albany, N. Y., in the month of October, eighteen hundred and sixty-five, and on the twentieth day of August, eighteen hundred and sixty-six, a decretal order was granted (page 187,) by which it was

"Ordered, adjudged and decreed, that by virtue of the agreement and conveyance between Dennis G. Littlefield and Treadwell & Perry, dated the fifth day of April, eighteen hundred and fifty-three, and set out in the original bill of complaint, and the assignments thereof, the said Mary J. Perry was, and the said John S. Perry, as trustee and executor of her last will and testament, is vested with the exclusive right, within the States of New York and Connecticut, of making, using, and vending to others to be used, stoves, embracing the improvements mentioned in and covered by the several letters patent of the United States, and the several re-issues thereof, mentioned and set forth in the original bill of complaint, and in the bill of revivor and supplement filed in this cause in the office of the clerk of this court, and that the defendants, and each of them, have infringed upon the exclusive rights of the complainant aforesaid.

And it is further ordered, adjudged and decreed, that the complainant do recover of the said defendants all the profits, gains and advantages which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from the manufacture, use or sale of stoves within the States of New York and Connecticut, embracing the improvements described in and covered by the said letters patent, and the re-issues thereof, or any of them, mentioned in the bills of complaint filed in this cause as aforesaid.

And it is further ordered, adjudged and decreed,

that the said complainant recover of the said defendants his costs, charges and disbursements in this suit to be taxed.

And it is further ordered, adjudged and decreed, that it be referred to Augustus A. Boyce, Esq., one of the masters of this court, to ascertain and take and state and report to the court, an account of the gains, advantages and profits which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from infringing upon the rights of the complainant by the manufacture, use or sale of stoves within the States of New York and Connecticut, containing the said improvements, or any of them."

The master therein mentioned proceeded immediately to take proofs. (References to the proofs are hereinafter made.)

The master's report was filed in the clerk's office without giving the parties notice to appear and make their objections to the draft of said report. The material portion of said report is as follows (page 189, fol. 432):

"In proceeding to ascertain the amount of the gains and profits received by or accruing to the said defendants, by the manufacture and sale of the stoves in question, I have found it difficult to determine the exact number, value, or amount.

This has arisen partly from the manner in which the books have been kept during the period of time in eighteen hundred and sixty-two, eighteen

hundred and sixty-three, eighteen hundred and sixty-four and eighteen hundred and sixty-five, embraced in the decretal order; also, from the mixed kind of business carried on by the defendants at their establishment in Albany, where all the stoves in question were manufactured, fitted up and sold. That the price of material and labor there during the said period was not uniform, but varied a large percentage in price. The castings for said stoves being made at and by several shops and firms in Albany, under contract for the said defendants, and where a large number of furnaces, parlor furnaces and parlor stoves, were at the same time made for and delivered to defendants, at their store or place of business, and which were subsequently mounted or finished together ready for market, make it difficult to determine the precise profits on each.

Neither can the exact proportion which each kind of said business bears to the other be determined. Yet, for practical purposes, and with reasonable certainty, the number and average profits apiece upon said stoves during the said four years, embraced in the said decretal order, have been ascertained, and the same is hereby submitted to be substantially in quantity, price and value as set forth in the following tabular statements, and making a part of this report, to wit:

	1862.
1st. Number of Morning Glory stoves made of Nos. 9, 10, 11, 12, 14, 16, aggregated at	1767.

2d. Number of additional castings of same of Nos. 9, 10, 11, 12, 14, 16, aggregated at 42.		
3d. Estimated profits on odd castings, mica and soap stone connected with said stove business, aggregate amount,	$43 50	
4th. Estimated profits on the 42 castings, as valued at $4 each, ...	168 00	
5th. Estimated profits on the 1767 stoves, as sold, at $5.50 each, is.....	9,738 50	
		$9,950 00

1863.

1st. Number of Morning Glory stoves made of Nos. 9, 10, 11, 12, 14, 16, aggregated at 3,297.		
2d. Number of additional castings for repairs, aggregate at 50.		
3d. Estimated profits on soapstone, brick and mica connected with said stove business, aggregate amount, ...	$310 34	
4th. Estimated profit on the value of 50 castings, at $4 each, is.....	200 00	

5th. Estimated profit on the 3,297 stoves, as sold, at $5 each,.....	16,485 00	
		16,995 34

1864–5.

1st. Number of Morning Glory stoves made of Nos. 9, 10, 11, 12, 14, 16, aggregated at 3,718,		
2d. Number of additional castings of all kinds, aggregated at 250.		
3d. Estimated profits on soapstone, brick and mica connected with said stove business, aggregate amount,.....	635 48	
4th. Estimated profits on the value of 250 castings, at $5 each, is.....	1,000 00	
5th. Estimated profit on the 3,718 stoves, as sold, at $6.50 each,.....	24,167 00	
		25,802 48
Total,.....		$52,747 82

On the basis of estimated amounts in evidence, as above summarily set forth, I do hereby certify and report that I find the amount of gains and profits made by the defendants in and by the manufacture, use or sale of the said stoves embraced within the territory, and during the period of

time, and of the character and kind set forth in the decretal order made in this cause, is the sum of fifty-two thousand seven hundred and forty-seven dollars and eighty-two cents ($52,747\frac{82}{100}$). In my investigation I have refrained from entering upon the consideration of the numerous legal questions and principles raised during the examination and arguments before me, having regarded those already settled by the court in passing the decree herein."

Within the time required by the rule, the defendants filed exceptions (pages 191–194), and at the earliest opportunity made a motion, in open court, to have said report referred back to the master, with instructions to proceed in accordance with the decree and the practice in such cases made and provided.

The court thereupon, on the eighteenth of January, eighteen hundred and seventy, ordered (page 194), that "upon the complainant filing with the clerk a stipulation to the effect that the exceptions taken by the defendants to the master's report may stand for hearing with like effect as if the parties had been summoned before the master, to file objections and settle his report, the said motion be and the same is hereby denied."

Complainant filed the required stipulation. (Pages 194–5.) The master, who was also the clerk of said court, thereafter, and without any instructions or order from said court, on the said eighteenth day of January, eighteen hundred and seventy, filed at his office a supplemental report, which is included in this record (page 195). But as the defendants had no notice of it, and no opportunity to file exceptions to it, and as it was not before the court at the hearing upon the exceptions, we submit it cannot be considered here.

The cause was finally heard upon the exceptions, and a decision rendered at an adjourned term of the Circuit Court, held at Utica, New York, in March, eighteen hundred and seventy-two. The court did not give a written opinion, but ordered "that the said exceptions be and the same are hereby overruled, and complainant be allowed to proceed to a decree" (page 196, fol. 453).

The final decree (page 196, fol. 456) was entered on the eighteenth day of April, eighteen hundred and seventy-two, and within the time required by law, for an appeal to operate as a supersedeas, this appeal was taken.

ASSIGNMENT OF ERRORS.

First. The court below erred, in granting the motion for a provisional injunction in this cause, and in holding therein that the original bill was "filed by the plaintiff for the infringement of certain patents" * * * * "of which she claims the exclusive right by assignment," and that "the bill sets out various assignments deducing a title from the patentee to the exclusive right to the use of the patents for the territories mentioned." (Page 33, fol. 69.) For that the said original bill did not disclose that said plaintiff had, or that she claimed "the exclusive right by assignment," to the use of any patent.

Second. The court below erred in denying the motion to dismiss the original bill of complaint. (Page 76, fol. 159.)

For that the said bill did not claim, nor did it disclose that Mary J. Perry, the original complainant had acquired, by virtue of the agreement therein mentioned, a "legal title to the patent of fifteenth April, eighteen hundred and fifty-one, and an equitable title to the improvement (if it was such) for which an application was then pending for a patent;" nor did it disclose that she had acquired any right, title or interest in or to the contract between Dennis G. Littlefield and "Treadwell & Perry," therein mentioned. (Page 28.)

Also, for that the said contract did not convey such a right, legal or equitable, to the patent or to the invention and improvements therein mentioned, as that said court could take cognizance of an action for the violation thereof as between citizens of the same State.

Third. The court below erred in granting the interlocutory decree determining the rights of the parties. (Page 187).

1st. Said decree is erroneous in that it assumes to adjudicate a controversy between citizens of the same State, not within the jurisdiction of the Circuit Court of the United States.

For that the contract under which the appellee claims did not convey the "exclusive right" to the use of any patent, or any such right under, or in and to the patent of eighteen hundred and fifty-one, particularly mentioned therein, or in and to the subsequent patents mentioned and described in the bills of complaint herein, as would authorize an action for the infringement of said patent, nor did it convey any such right or interest in or to the invention or improvements covered by said patents, as that said court can take cognizance of an action for the violation thereof.

2d. The said decree is erroneous in adjudging that by virtue of the agreement set forth in the original bill and the assignments thereof (page 28), Mary J. Perry, the original complainant, was, and the appellee is, "vested with the exclusive right, within the States of New York and Connecticut, of making, using, and vending to others to be used, stoves embracing the improvements mentioned in and covered by the several letters patent mentioned in the bills herein."

For that the allegations of said bills and the proofs showed that said complainant did not acquire and had no title to said agreement, and was not vested with any right, title or interest in or to said patents, or the improve-

ments mentioned in or covered thereby. And that, if said complainant and appellee acquired a right in or to any of the improvements covered by letters patent described in the bills, such right did not extend to all of said patents, but only to the one mentioned in the agreement, and to the improvement, if proved to be such, for which an application was pending when the contract was made.

3d. Said decree is erroneous in adjudging that complainant was "vested with the exclusive right within the States of New York and Connecticut, of making, using and vending to others to be used, stoves embracing the improvements mentioned in, and covered by the several letters patent" set forth in the bills.

For that as to the improvements covered and secured by some of the letters patent therein mentioned, it did not appear that complainant had any right, title or interest therein whatsover; and, for that, the contract between the parties became inoperative and void by reason of the failure and omission of the complainant, and those under whom he claims to do and perform the things in said agreement on their part stipulated to be done and performed, especially in failing to make and keep for sale coal-burners and stoves, as in said agreement required, and in failure to keep and render accounts, and make payments, as therein agreed and provided.

4th. Said decree is erroneous in deciding that "the defendants, and each of them, have infringed upon the exclusive right of the complainant aforesaid."

For that it appeared upon the pleadings and

proofs that no exclusive right, either legal or equitable, of complainant had been infringed upon.

5th. The said decree is erroneous in that it states generally that defendants "have infringed upon the exclusive right of the complainant," without specifying in what particulars.

For that the said decree should have specified what rights were infringed, and under what particular patent or patents such exclusive right was secured.

6th. Said decree is erroneous in determining and adjudging complainant entitled to recover "all the profits, gains and advantages which the said defendants, or either of them, have received or which have arisen or accrued to them, or either of them, from the manufacture, use, or sale of stoves within the States of New York and Connecticut, embracing the improvements described in and covered by said letters patent, or the re-issues thereof or any of them, mentioned in the bills."

For that said complainant (if entitled to all the inventions mentioned in the bills applicable to stoves) was only entitled to the profits, gains and advantages received or accruing from the manufacture, use or sale of the particular improvements patented, and secured by the re-issued patents that were in force at the time the supplemental bill was filed, and which were therein set out and claimed under; and not to all the profits from the manufacture of stoves unpatented, or portions of which were not claimed to be patented, or portions once secured by the patents, that had been surrendered and cancelled.

Fourth. The said court erred in denying the appellant's motion to refer back the master's report to the master. For that said report is imperfect and irregular, and not in conformity with the decree referring the case to said master, nor was it made or settled in conformity with the rules and practice of said court (page 194, fol. 446).

Fifth. The said court erred in overruling appellants' exceptions to the master's report (page 196, fol. 453), and in authorizing and directing the appellee to proceed to a final decree. For that the appellants made and filed the following exceptions, among others, to said master's report: (Page 191-4.)

"*First exception.* For that the said master hath certified in said report that "the amount of gains and profits made by the defendants in and by the manufacture, use or sale of the said stoves embraced within the territory and during the period of time, and of the character and kind set forth in the said decretal order made in this cause, is the sum of fifty-two thousand seven hundred and forty-seven dollars and eighty-two cents ($52,747.82)"; whereas the said master should have certified and reported to the court "an account of the gains, advantages and profits which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from infringing upon the rights of complainants by the manufacture, use or sale of stoves within the States of New York and Connecticut containing the said improvements, or any of them."

The said report being so made, upon the false theory or basis, that the complainant was entitled to, and the master was to report, the total gross profits, gains, &c., made by the defendants, upon the whole number of stoves, and the whole of each said stoves made by them during the period in the decretal order mentioned; whereas the report should have been made upon the basis of the profits, gains, &c., which were made by or accrued to defendants from infringing upon the rights of complainant by embracing the improvements mentioned in the stoves by them made, &c."

Which said exception was overruled by the court.

"*Second exception.* For that the said master hath certified in said report that he had proceeded to investigate the matters which it was, by said decretal order, directed to ascertain and report: "Whereas, the said master, according to the truth and fact, should have certified that he had summoned said parties to proceed in such investigation, and that they had duly appeared before him, and that from time the complainant had produced and brought in before him certain proofs and testimony, and after the same had all been brought in and no further proof or testimony was offered, that the said master was unable to report 'an account of the gains, advantages and profits which the said defendants, or either of them, had received, or which had arisen or accrued to them, or either of them, from infringing upon the rights of the complainants, etc.;' for the reason that no proof or testimony upon that subject had been introduced

or brought in before him, or, if any, none which was competent, or upon which he could base a report for more than a nominal amount.

Which said exception was overruled by the court.

"*Third exception.* For that the said master hath certified in said report, "Yet for practical purposes and with reasonable certainty, the number and average profits apiece upon said stoves, during the said four years embraced in the said decretal order have been ascertained, and the same is hereby submitted to be substantially in quantity, price and value, as set forth in the following tabular statement, and making a part of this report," etc. Then giving the tabular statements, to which reference is hereby had, whereas said master should have certified, unqualifiedly, with actual certainty, the actual profits, etc., really made, and as they certainly were, or were proved to be."

Which said exception was overruled by the court.

"*Fourth exception.* For that said master hath certified in his said report, and in the statements which are made a part thereof 'estimated' profits, whereas he should have certified and reported actual profits."

"*Fifth exception.* For that said master hath certified in said report, 'estimated profits on odd castings, mica and soapstone, connected with said stove business,' whereas he should not have certified or reported any such profits, either estimated or actual."

Which said exception was overruled by the court.

"*Sixth exception.* For that said master hath certified in said report, 'estimated profits on castings,' whereas he was not directed to, and should not have certified or reported such profits, either estimated or actual."

Which said exception was overruled by the court.

"*Seventh exception.* For that said master hath not certified, identified, specified and referred to any particular state of facts, charge, affidavit, deposition, examination or answers, so as to inform the court what state of facts, charge, affidavit, deposition, examination or answers were brought in or used before said master, and upon which said report was based or founded, as by the rules of the court in such cases required."

Which said exception was overruled by the court.

"*Ninth exception.* For that the said master hath not certified or reported which, if any, of the patents referred to in complainant's bills, or the improvements referred to in the decree, were infringed by defendants or were embraced in the stoves made by them. Whereas, he should have reported upon said matter, and no testimony having been brought in before him upon the same, he should have reported that said patents were not infringed by making, using or selling stoves, nor said improvements embraced in the stoves made by defendants or either of them."

Which said exception was overruled by the court.

"*Eleventh exception.* For that said master hath not certified the amount of the gain or profit made

by or accruing to the defendants, or either of them, by reason of embracing in any stove or stoves made, used or sold by them any one or more of the improvements mentioned."

Which said exception was overruled by the court.

"*Twelfth exception.* For that said master hath not, in his said report, made any deduction or allowance for bad debts, interest on capital, rent, contingent expenses, taxes, nor for ordinary mechanical profits."

Which said exception was overruled by the court.

"*Thirteenth exception.* For that said master hath reported an excessive amount as gains and profits, and which is entirely without evidence to sustain it."

Which said exception was overruled by the court.

"*Sixteenth exception.* For that the said master hath certified in his said report, the amount of the profits, gains, etc., upon the stoves, upon a conjectural estimate, and not with accuracy or certainty; and that he has not stated or reported the manner of estimating or computing adopted by him, or the basis of his estimates or tabular statements.

Which said exception was overruled by the court.

"*Seventeenth exception.* For that said master hath certified and reported the amounts stated and reported by him in his said report, as "the average profits apiece upon said stoves," thus evidently assuming and reporting upon the assumption,

that equal numbers of the different sizes of stoves were made and sold, whereas in truth and fact, as shown by the testimony before him, there was a much larger number of the smaller and less expensive sizes made and sold than of the larger and more expensive sizes, and that upon such smaller sizes the profits were much less than upon the larger sizes, and that there is no theory or basis upon which, with any certainty or correctness, the profits upon the said stoves can be estimated by any system of averaging, and that the number of each size of the stoves made and sold, and the profits thereupon, should have been separately and correctly stated as the same were found to have been in fact.

Which said exception was overruled by the court.

"*Nineteenth exception.* For that said master should have reported that the said decree or decretal order, under which he assumed to act, was so uncertain, defective and informal, as well as inconsistent, that he could not report thereunder without assuming to determine questions in regard to which the decree should have been certain, definite and full, that the particular mode or manner of the adjudged infringement upon the rights of the complainant was not determined in or by said decree, so that said master could know or determine upon what he was to report.

Which said exception was overruled by the court.

"*Sixth.* The final decree herein is erroneous:

1st. Said decree is erroneous in ordering and adjudgingt hat the said master's "report, and all things therein contained, be and the same is hereby ratified and confirmed," page 197, fol. 457. For that said report was erroneous and should not have been confirmed.

2d. Said decree is erroneous in adjudging and decreeing "that the said defendants pay to the complainant the sum of sixty-one thousand four hundred and eighty-six dollars and thirty-seven cents." For that the master's report, upon which it was based, only authorized a decree for fifty-two thousand seven hundred and forty-seven dollars eighty-two cents. (Page 190, fol. 436).

BRIEF OF ARGUMENT.

First. The circuit court had no jurisdiction of this action.

This question was raised distinctly upon the motion to dismiss the bill, and the court, in deciding that motion (page 76, fol. 159), sustained its jurisdiction upon the alleged ground that the contract vested in "Treadwell & Perry" a "legal title" to the patent of 1851, and "an equitable title to the improvements." We submit that it did neither; that at best it gave only a license, and that this is all the original bill claimed. This question was also raised in answer to the original, and supplemental bill (page 170, fol. 365, page 174, fol. 380) filed in pursuance of an order of the court (page 99), dated subsequent to said opinion.

1819,

Independent of and prior to the act of ~~1838 (chap. 357, Laws of 1836, 5 Stat. at Large, 117-124)~~, the circuit courts of the United States had no jurisdiction of an action in equity to restrain an infringement of a patent, where the parties were all residents of the same State.

Livingston *v.* Van Ingen, 1 Paine, 48, 52.

the act of 1836

Jurisdiction in equity cases is conferred by section 17 of ~~that act~~, "in cases arising under any law of the United States granting or confirming to inventors the exclusive right to their inventions or discoveries," to prevent the violation of rights secured by any law of the United States. It has jurisdiction in no other cases. "Whenever a contract is made in reference to them (Patent Rights), which is not provided for or regulated by Congress, the parties, if a dispute arise, stand upon the same ground as other litigants."

Wilson *v.* Sandford, 10 How. 99, 102.

The only exclusive rights recognized and secured by those laws, aside from the rights of the patentees, are those of assignees of the whole interest or an undivided

part thereof, and of grantees of an exclusive right to the thing patented within any specified part of the United States. (Act of 1836, chap. 357, §§ 11, 14.)

Prior to the act of 1836, a grantee of a particular district could not maintain an action on the patent in his own name.

Tyler *v.* Tuel, 6 Cranch. 324.

That act "renders the monopoly capable of subdivision in the category of its locality, but in no other way."

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"It has not given a legal sanction to such transfers (i. e., one less or different from an assignment or grant), nor subjected even a pirate of a machine to actions by fifty different transferees." Id.

To maintain an action for the infringement of a patent right, the plaintiff must be the patentee or the assignee of the entire invention protected by the patent, or of an undivided interest therein (in which case he must join with the other tenants in common), or he must be the grantee of an exclusive sectional interest in the entire monopoly to the exclusion of the patentee himself, for a specified part or portion of the United States.

Gayler *v.* Wilder, 10 How. 477; 1 Wall. Jr. 337.

Potter *v.* Holland, 1 Fish. 327.

Washing Machines ss Earle 2 Fish 205 S. C. 4 Blatch, 206

In the case of Snydam v. Day, 2 Blatchford, 20, Charles Goodyear, being the owner of a patent "for an improvement in the mode of preparing caoutchouc with sulphur, for the manufacture of various articles," assigned to the plaintiff "the exclusive right, privilege and license to use the said improvement in the manufacture of shirred or corrugated India-rubber goods," he alleged an infringement by "the manufacture of shirred or corrugated India-rubber goods."

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BRIEF OF ARGUMENT.

First. The circuit court had no jurisdiction of this action.

This question was raised distinctly upon the motion to dismiss the bill, and the court, in deciding that motion (page 76, fol. 159), sustained its jurisdiction upon the alleged ground that the contract vested in "Treadwell & Perry" a "legal title" to the patent of 1851, and "an equitable title to the improvements." We submit that it did neither; that at best it gave only a license, and that this is all the original bill claimed. This question was also raised in answer to the original, and supplemental bill (page 170, fol. 365, page 174, fol. 380) filed in pursuance of an order of the court (page 99), dated subsequent to said opinion.

1819,

Independent of and prior to the act of ~~1838 (chap. 357, Laws of 1836, 5 Stat. at Large, 117-124)~~, the circuit courts of the United States had no jurisdiction of an action in equity to restrain an infringement of a patent, where the parties were all residents of the same State.

Livingston *v.* Van Ingen, 1 Paine, 48, 52.

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laws of the United States, an assignee of a patent must be regarded as acquiring his title to it, with a right of action in his own name, only by force of the statute. *Second.* Such exclusive right of action exists in favor of a sole assignee, only in two cases, namely: where he acquires, by assignment, the whole interest in the patent, or a grant or conveyance of the whole interest within some particular district or territory. *Third.* Section eleven of the act of eighteen hundred and thirty-six, which authorizes the assignee of "the whole interest or any undivided part thereof," taken in connection with section fourteen of the same act, gives an action only to such party (composed of one or more persons) as possess the whole interest. *Fourth.* The subject-matter of a patent is not partable, except in respect to territorial assignments. *Fifth.* As the declaration in this case shows that the plaintiff has an interest in only a part of the patent, to wit, a license to use, in the manufacture of a particular kind of goods, the invention covered by the patent, it is bad on its face, and judgment must be rendered for the defendant."

And to maintain an action in equity between citizens of the same State, the complainant must show a legal title recognized by the laws of the United States (*i. e.* as patentee, assignee or grantee), or at least such an equitable title as entitles him to a conveyance of one of the recognized legal interests.

Park *v.* Little, 3 Wash. 196.
Nesmith *v.* Calvert, 1 Wood & M. 34.
Brown *v.* Shannon, 20 How. 55.

Said court has no jurisdiction of an action between citizens of the same State, to protect the rights of a licensee or any one holding an interest under a patent, less than an interest, in the entire invention for all the purposes to which it may be applied.

Goodyear & Judson, *v.* India Rubber Co., 4 Blatch. 63.
See, also, Phillips Practice (2d ed.), 805; 10 How. 99; 20 id. 55.

The contract between the parties (executed in two parts but both executed at the same time, and each referring to the other, and so constituting but one contract) did not vest in "Treadwell & Perry" any exclusive right in, or legal title to, or equitable right to perfect a title to any patent or invention, nor did it confer any right that is recognized by the laws of the United States:

1. Because by it is expressly excepted and reserved to the patentee the right to the use of the inventions in their application to a particular class of furnaces; those placed in the "cellars or basements of houses for the purpose of heating several rooms or larger part of a dwelling-house." (Page 551, fol. 977.)

2. Because it is expressly stipulated in the contract that the patentee shall sue all infringers "in his own name," or otherwise (page 549, fol. 973), clearly showing the intent of the patentee to retain the control of the patents.

3. Because, by the contract the patentee reserved a premium, or royalty of fifty cents on each stove to be manufactured by "Treadwell & Perry." (Page 550, fol. 975.)

4. Because, by the contract, the said "Treadwell & Perry" were required to account to the patentee in a particular manner for all stoves made and sold by them. (Page 550, fol. 976.)

5. Because in said contract there was a provision by which the same might become "inoperative and void" (page 551, fol. 977–8; also page 552, fol. 983), "and all the rights and interests herein and hereby conveyed" were to "revert" to the patentee, in the event that "Treadwell & Perry" neglected and refused to make and sell the stoves therein mentioned.

That these exceptions, reservations and conditions constituted "Treadwell & Perry" licensees, merely.

See Gaylor *v.* Wilder, 10 How. 477.
Potter *v.* Holland, 1 Fish. 327.
Blanchard *v.* Eldridge, 1 Wall., Jr. 339.
Armstrong *v.* Hanlenbeck, 3 N. Y. Leg. Obs., 45.
Goodyear *v.* C. Rubber Co., 3 Blatchf. 449

S. C. 4 Blatch, 206

(In this last case the court took jurisdiction because of the residence of the parties in different States, Nelson, J., 456.)

Goodyear *v.* McBurney, 3 Blatch. 32.
Suydam *v.* Day, 2 Blatch. 20; 3 N.Y.Leg. Obs. 43.
Mitchell *v.* Hawley, 16 Wall. 545.

To sustain this bill would establish as law that there can be as many separate and distinct exclusive rights, under a patent, owned by different parties, upon which each separately may file a bill for infringement against parties residing in the same State, as there are different articles to be made under it. We submit no such jurisdiction is given to the circuit court. In this instance, judging from the agreement between the parties, it was contemplated that "stoves," "furnaces," "ranges," and "ovens" (page 550, fol. 976) might be made, under the patent therein mentioned. It was in the power of the patentee to divide the right to work under the patent into these four parts; and to grant to separate licensees an exclusive right and privilege to make the article mentioned, reserving a royalty upon each article so made and sold.

The complainant, by the allegations of the original bill, only claimed to be vested with one of these four parts, viz: the exclusive right and privilege of making stoves, embracing the inventions, conceding that some other person or persons had the same exclusive right and privilege of using the inventions for some other purposes.

It will be perceived that in the decretal order (page 187), the court does not adjudge that complainant was vested with a "legal title," or had an exclusive interest in the whole invention; but simply a right to make, use and vend "stoves embracing the improvements mentioned;" and sustains an action for the infringement of that right, so far only as damages were sought for: a perpetual injunction was not granted, notwithstanding it was prayed for in both bills.

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Second. That no title whatever [illegible] pleadings or by the proofs, in the said Mary J. Perry, the original complainant, to the contract of April fifth, eighteen hundred and fifty-three, on which this action was based, or to any interest in any patent or invention that might have been covered thereby.

At the date of the transfer by Wm. B. Treadwell and John S. Perry to Dickey, April seventh, eighteen hundred and sixty-two (under which transfer Mary J. Perry, the original complainant, claimed title), they had, so far as disclosed by the bills, no right, title or interest in said contract which they could transfer.

They had already, March twenty-fifth, eighteen hundred and sixty-two, (Exhibit T, page 426) transferred the contract and all their right, title and interest therein, to George W. Sterling, and Dickey therefore took nothing by their pretended transfer to him. (See allegations in original bill, page 28.) And if we turn to the proofs, we find the facts to be established precisely as stated in this bill (exhibits T, U, V, and W, page 426–9), and that this transfer to Sterling was in fact perfected and completed. See complainant's testimony.

John S. Perry, trustee, etc., appellee, in his direct testimony (page 210, fol. 497), states that the contract was sold to Sterling about the "(twenty)-fifth of March, eighteen hundred and sixty-two." That it was sold "in good faith and for a valuable consideration." On his cross-examination (page 223, fol. 515); that the consideration was "three

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soever, either legal or equitable, in or to the patent or inventions covered thereby; that such title remained in the inventor; and that this action is, therefore, simply upon a contract of which the circuit court can take no jurisdiction as between these parties.

It was not necessary that defendants should raise the question of jurisdiction by plea. When the want of it appears on the face of the record it may be raised at any time in any stage of the cause. Hoyt vs Marine Insurance Co. 7 S. 580. Anderson vs Jackson, 2 Paine 426.

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hundred dollars;" that the assignment "was written upon a separate piece of paper and attached to it," and in reply to interrogatory (fol. 515) "when was it you transferred it to Dickey?" replies "according to the bill of complaint it was on the seventh day of April, eighteen hundred and sixty two." On his re-direct examination (page 306, fol. 633), that he reported the sale to Sterling, to W. B. Treadwell, and "paid him one hundred and fifty dollars in cash as his share of the proceeds."

And, in reply to an interrogatory (same folio), "Was this a bona fide payment, and has Mr. Treadwell had any interest in these contracts since that time?" replies, "It was, and he has not."

William B. Treadwell, in his direct examination, (page 314, fol. 645) testifies that the contract of April fifth, eighteen hundred and fifty-three, "was sold to Sterling." On his cross-examination (page 330, fol. 667), in reply to interrogatory, "Will you testify that the sale to Sterling of the contract of April fifth, eighteen hundred and fifty-three, was a bona fide purchase on his part," replies, "When I signed the transfer, I supposed it was a bona fide transaction. I was told so." That he expected to receive one-half of the money paid by Sterling, and that he did "receive half." The bill shows that this transfer was in life after the pretended transfer or quit-claim to Dickey, as it is alleged that it was recorded May 31, 1862 (page 28).

It will be urged that because Sterling, on the twenty-sixth of June, eighteen hundred and sixty-two, re-assigned and re-transferred to Wm. B. Treadwell and John S. Perry all the interest they had transferred to him, on the twenty-fifth of March, eighteen hundred and sixty-two, that such transfer inured to the benefit of Dickey, and so perfected his title. But we submit this claim cannot be sustained.

The doctrine of estoppel which bars a grantor who has conveyed with warranty from asserting an after-acquired title, and which has been held to prevent a vendor of

chattels, in his possession, from claiming under a subsequent title, because of an implied warranty of title upon the sale, does not apply.

1*st*. The pretended transfer to Dickey contains no covenant of warranty, but is only claimed in the bill (page 28, fol. 55) to be a transfer of "all their interest in the aforesaid contract and patents." Under such a transfer no estoppel would arise even as against them. "No right passeth by a release but the right which the releasor hath at the time of the release made."

Littleton, 444.
Quarles *v.* Quarles, 4 Mass. 682, 688.
Edwards *v.* Varick, 5 Denio (N. Y.), 664, 703.

"A deed of release contains no warranty and works no estoppel."

7 Conn. 250.
13 Pick. 116.

"If a possessor, without title, convey by quit-claim deed, and afterward acquire good title, it does not inure to the benefit of the grantee."

Jackson *v.* Hubble, 1 Cow. 613.

2*d*. A warranty cannot be implied here. There is no implied warranty on the sale of chattels, save where good faith requires, that is where the purchaser has been led to believe, and as a prudent man had a right to suppose, he was acquiring a title.

Thus it has been repeatedly held that there was no implied warranty when the chattels were not in the possession of the vendor at the time, but that in such case the rule *caveat emptor* would apply.

McCoy *v.* Artcher, 3 Barb. (N. Y. S. C.), 323, and cases cited.
Scranton *v.* Clark, 39 N. Y., 220.

So, if the vendee has notice of the lack or defect of title he can scarce claim an implied warranty.

Here, the assignment to Sterling was attached to the contract. It is so stated in the transfer itself, and Dickey himself was a witness to it. (See exhibit T, page 426, fol. 805); and he testified that he signed it and saw it exe-

cuted (page 392. fol. 755); and thus he had full notice of the rights of Sterling.

3d. But this doctrine of estoppel only bars a claim under an after-acquired title; it does not give a title. While a deed with warranty will bar the grantors and his heirs of a future right; "this is not because a title ever passed by such a grant, but the principle of avoiding circuity of action interposes and stops a grantor from impeaching a title, to the soundness of which he must answer on his warranty."

Co. Litt., 265, a.
Jackson *v.* Bradford, 4 Wend. 619, 622.

The doctrine, therefore, cannot be invoked to make a void title a valid one in an action against a stranger to the grantor or vendor.

The complainant was bound to show a title to the contract; that she utterly failed to do, and we submit that until a title is perfected by a transfer of the subsequently acquired title of William B. Treadwell and John S. Perry, either by voluntary act, or by a decree of a court of competent jurisdiction in an action against them, that the appellee is not in a position to enforce this contract against these appellants.

Suppose these gentlemen should also bring an action against us upon this contract, claiming title under the retransfer to them by Sterling, could we claim the benefit of this doctrine of estoppel and plead in bar that they had transferred to Dickey with an implied warranty of title when they had no title? Certainly not; the court would well answer: You are not privies to this implied warranty, if any exists; you cannot enforce it, nor will it operate as an estoppel in your favor.

"An estoppel must be reciprocal and bind both parties; and it is upon this principle of reciprocity that it is confined in its operation to parties or to privies in blood or estate only. It extends no farther in any case, except when it is created by matter of record."

Jackson *v.* Brinckerhoff, 3 Johns. Cas. 103.

"Regularly, a stranger shall neither take advantage of, nor be bound by, an estoppel."

2 Co. Litt. 476.
Jewell *v.* Harrington, 19 Wend. 472.

These are well established principles, and we submit that we are not barred by any doctrine of estoppel from asserting this defect of title, and that such defect is fatal to complainant's right of recovery in this case.

That these transfers gave the appellee no title to the contracts or inventions, was expressly held in Perry, Trustee, &c., (the appellee in this case) *vs.* Corning.

7 Blatch. 195, 204.

The title of Mary J. Perry to the contract of April fifth, eighteen hundred and fifty-three, has always been disputed. The first opinion (page 33, fol. 70) quotes from the original answer, showing that it was therein denied (following the language of the second interrogatory of the bill, page 30, fol. 58) that any rights under the patents had been "legally assigned and transferred to Treadwell & Perry, and from Treadwell & Perry through various parties to the complainant, Mary J. Perry."

It was disputed on the motion to dismiss the original bill, when it was held (second opinion, page 76, fol. 159) that "the complainant stands in the place of Treadwell & Perry."

Again, it was questioned in the amended answer, filed in pursuance of an order of the court (page 99), and subsequent to the date of these opinions, where (in answer to the averment of title in complainant, by reason of these various transfers), it was denied (page 170, fol.

365) that "Mary J. Perry was vested in law or equity with the exclusive right, or any right under any of the patents set forth in her said bill." Answering, also, (fol. 366) that "if, however, the honorable court should hold (at the final hearing of this cause) that the said grant and supplementary agreement conveyed to Treadwell & Perry the exclusive right to said patent of April fifteenth, eighteen hundred and fifty-one, within the States of New York and Connecticut, and the same has not been rendered void and forfeited as aforesaid; but has been conveyed by proper and legal transfers to this complainant," "she is not entitled to any assurances or evidence of title to the said patent of June twenty-fifth, eighteen hundred and sixty-one, and twenty-fourth January, eighteen hundred and fifty-four, and the re-issues thereof; for the reason that they are not improvements in the invention patented April fifteenth, eighteen hundred and fifty-one." And in answer to the second interrogatory of the bill, (page 172-3, fol. 370) it was admitted "that certain rights to the said invention and letters patent dated April fifteenth, eighteen hundred and fifty-one, for the States of New York and Connecticut, were conditionally assigned to Treadwell & Perry; but denied that the exclusive right in said patent was assigned to them." "And as to the transfers from the said Treadwell & Perry, through various parties to this complainant, there have been no such transfers with defendants' knowledge, approbation, or consent; therefore defendant can neither admit nor deny that such transfers have been made; but insists that complainant be required to prove the same, before they be taken as true."

In this record we have the proofs thus called for, which fail entirely to show title in the complainant.

Third. By the evidence it appears clearly that said agreement became "void and of no effect" (page 552, fol. 983) many years ago. That in effect it was abandoned by said finm, at its dissolution, and that all the rights thereby conveyed "reverted" to Littlefield. That it was not true, as alleged (page 17, fol. 36), that it was "at all times, and in every respect, performed with diligence and fidelity."

The firm of "Treadwell & Perry," was dissolved on the 20th of June, 1854 (page 199). As a firm, they did nothing after that date, except "winding up their old business" (page 258, fol. 564.) The four sizes of patterns furnished to them by Littlefield in 1853, to be used in place of those mentioned in the agreement (page 550, fol. 974), without first having the consent of Littlefield, were sold and transferred to Treadwell, Perry & Co. (page 323, fol. 657), a firm composed of four persons: Wm. B. Treadwell, John G. Treadwell, John S. Perry, and Edward Norton (page 319, fol. 652); said Wm. B. Treadwell and John S. Perry agreeing with Norton and J. G. Treadwell "not to become interested in, nor connected with any other establishment or kind of business" (page 323, fol. 657). Thus putting it out of their power to perform this agreement with Littlefield; and it nowhere appears that they made any provision by which the succeeding firms should perform it for them, or that said succeeding firms had any interest whatever therein.

The firm of Treadwell, Perry & Co. was dissolved on the first day of November, 1854, and a new firm succeeded them composed of five persons: "Wm. B. Treadwell, John S. Perry, Edward Norton, John G. Treadwell, and one Rathbone, a special partner" (page 320, fol. 652), under the style of W. & J. Treadwell, Perry & Norton. Said patterns, or those that had not been destroyed by Treadwell, Perry & Co. prior to November 1, 1854, became the property of this firm (page 329, fol. 665), and there was no provision made with this firm by which they were to perform this agreement with Littlefield.

The gentlemen formerly constituting the firm of "Treadwell & Perry" did not have control over said patterns so furnished to them in 1853, after they had become the property of the succeeding firms. The appellee testified that "they have been under the joint control of the different members of the different firms." (Page 292, fol. 613.)

The allegation (page 17, fol. 35) that "new patterns were completed, and new stoves manufactured therefrom" * * * "which was called by them 'The Brilliant,'" to a certain extent was true. But it was not true, as therein alleged, that such stoves were made by "Treadwell & Perry," or that stoves in "small number thereof were sold to different parties during the years 1854, 1855, 1856 and 1857," (denied in the answer page 165, fol. 356), for the reason that said "Brilliant" patterns were destroyed, instead of being employed to manufacture stoves; the appellee so testified. (Page 221, fol. 513.) Wm. B. Treadwell testified (page 330, fol. 666): "I have understood they were destroyed." He also testified (same folio) that in 1858 there were but three out of the four sizes of the patterns furnished to "Treadwell & Perry" in 1853, then in existence. The appellee testified (page 263, fol. 572) that in 1858 there were but three out of the four sizes of patterns furnished to "Treadwell & Perry" in 1853, then in existence; this, after admitting (page 234, fol. 530) that Littlefield, in 1853, furnished to "Treadwell & Perry" "four sizes" of patterns; the number mentioned in the agreement to be furnished by him. (Page 550, fol. 974.)

The firm of W. & J. Treadwell, Perry & Norton, became insolvent, and failed in May, 1860, and their effects, among which was the said three sizes of patterns, were placed in the hands of a receiver, J. C. Cook, "for settlement." The business of manufacturing and selling stoves was carried on by him instead of the firm of "Treadwell & Perry," as alleged in the bill (page 17, fol. 36), until September 1, 1860, in pursuance of an order of the Supreme Court of the State of New York; when these patterns and a portion of the stock of stoves were

sold to one John G. White, who transacted business until March 29, 1862. (Page-209, fol. 495.)

This sale by the receiver to White was in pursuance of an order of the Supreme Court of the State of New York "at public auction." (Page 418, also 321, fol. 654.)

Said White failed in this business and sold it, March 28th or 29th, 1862, to his creditors, whose names and residences were given by the appellee in his testimony. (Page 215, fol. 503.) These owners elected a board of trustees, and these gentlemen appointed Mr. John S. Perry appellee, "to conduct the business under the direction of this committee." (Page 215, fol. 504.)

It is not alleged, nor does it appear that any firm, or person, excepting "Treadwell & Perry," in 1853, and a part of 1854, ever had any right, by assignment, or otherwise, under the contract in question; but that the title therein, if it did not revert to Littlefield, remained in them individually, after the dissolution of their firm in 1854, until their individual assignment to Sterling in March, 1862. (Page 426.)

The appellee found a purchaser for said property (being authorized by said committee to sell it "for twenty-five cents on the dollar of the amount of the interest of each owner," (page 215, fol. 504) in the person of his wife, Mary J. Perry, the original complainant, and the same was transferred to her by this committee, on the 29th day of November, 1862 (page 215–216), the same day that the opinion written on granting the injunction in this cause was filed in the clerk's office (page 33).

The appellee testified that the complainant "made no stoves until after the 29th day of November, 1862." (Page 279, fol. 595.) This was more than three months after the original bill was sworn to, filed, and served. (Page 31, fol. 61.) Thus the appellee disproves the allegation therein (page 28, fol. 56). that complainant "had caused to be manufactured, at great cost and expense, large numbers of said stoves in compliance with and in performance of the stipulations on the part of said Treadwell & Perry, to

be kept and performed." And thus it appears that from June, 1854, down to a time three months subsequent to the commencement of this action, neither the firm of "Treadwell & Perry," nor their assignees, nor any person or persons having any right or interest in the Littlefield contract or patents, manufactured any stoves thereunder, or in any manner performed, or attempted to perform said contract; nor have said "Treadwell & Perry," or their assigns, in any manner paid to Littlefield the royalty or premium reserved to him by said contract.

The appellee, on his direct examination, testified (page 207, fol. 493) that Littlefield had never been paid any "premiums accruing under this contract of April 5, 1853," and in reply to an interrogatory, "why have you not done so?" replies: "for the reason that he continued to be largely indebted to us." He testified that "Treadwell & Perry," which as a business firm expired in 1854, and were individually insolvent and out of business in 1860, (page 209, fol. 495) as well as when so testifying (page 217, fol. 506), have given a credit to Littlefield on their books, "on the 31st of December every year, from 1853 to the present time" (1864). (Page 208, fol. 493.)

The firm of "Treadwell & Perry" never had a right to account to Littlefield in this manner; but were required to "keep a just and true account of all sales of said stoves or burners, of the names of the purchasers, and the places of their residences respectively, which shall be open at all proper times, at their counting room, to the examination of said Littlefield, and that a perfect settlement of and for the premiums shall be made on the first day of April, in each and every year." (Page 550, fol. 976.)

No such account was ever opened or kept, and no premiums on these stoves, as the appellee testified, have ever been paid to Littlefield.

Littlefield was not indebted to these gentlemen subsequent to the dissolution of their firm in 1854. The debt ($1,470 35) mentioned in the agreement (page 549) and in the original bill (page 7, fol. 19) became the property

of Treadwell, Perry & Co., and W. & J. Treadwell, Perry & Norton, and the balance, after payments had been made by Littlefield, went into the hands of Cook, receiver. The appellee testified (page 267, fol. 577) that J. C. Cook, as receiver, took possession of the book accounts that had formerly belonged to Jagger, Treadwell & Perry, Treadwell & Perry, and Treadwell, Perry & Co., all which had been transferred to the books of W. & J. Treadwell, Perry & Norton; and that as receiver, Cook found on those books a balance against Littlefield of $285 19; that this amount was included in the inventory of the property of said firm, which was taken possession of by said receiver. This interrogatory was put to the appellee (page 267, fol. 578): "Did not this balance shown against Littlefield on the books of W. & J. Treadwell, Perry & Norton, grow out of his indebtedness, and his transactions with Treadwell & Perry and Treadwell, Perry & Co.?" To which he replies: "It did."

A complete answer to the appellee's testimony, that Littlefield's account was credited with whatever premiums was due to him, is found in the following testimony, given on his cross-examination (page 301):

"Q. You have testified (direct examination, page 208, fol. 494) that in March, 1857, Treadwell & Perry rendered a statement to Littlefield, and afterwards commenced a suit. Will you state whether or not said statement, so rendered, was not for the indebtedness mentioned in the bill of complaint in this cause?

A. It was for a debt that Littlefield contracted with Treadwell & Perry in 1852.

Q. Was it not the amount of $1,470.35 that is mentioned in the bill of complaint in this cause?

A. It is not the same amount. They both grew out of the same thing.

Q. What credit did Treadwell & Perry give Littlefield upon said statement so rendered?

A. Cash received $509; and interest $16.61.

Q. What was the amount then claimed to be due Treadwell & Perry on the first of January, 1857?

A. The paper that I hold in my hand shows $1,283.

Q. Is not said paper the statement so rendered in March, 1857, by Treadwell & Perry?

A. It is.

Q. How soon after March, 1857, was it that Treadwell & Perry commenced the suit?

A. This document seems to be dated the 18th July, 1857. It is a copy of the bill of complaint.

Q. Did you, as one of the plaintiffs, make an affidavit when instituting said suit?

A. I did."

Here we have the appellee making oath in 1857 that Littlefield was indebted to Wm. B. Treadwell and John S. Perry by reason of the indebtedness mentioned in the bill of complaint in the amount of $1,283, $750 of which they had substantially agreed in 1853 should be paid in premiums. (Page 550, fol. 975.)

This is only consistent with the idea that this contract was abandoned by "Treadwell & Perry" upon the dissolution of this firm in 1854. As by this suit these gentlemen sought to recover from Littlefield the full amount of his indebtedness, less the cash he had paid them, notwithstanding the large number of these stoves sold by said firm in 1853, nearly thirteen hundred. (Page 203, fol. 486.)

Richard M. Rand (page 372), a witness for complainant, was a clerk for W. & J. Treadwell, Perry & Norton, from 1855 to the failure of this firm, and afterwards so acted for the receiver in closing up their business. He could have explained all the transactions of said firm with Littlefield, but was not inquired of in that respect. On his cross-examination he was shown certain papers, statements of account, partially in the handwriting of John S. Perry, appellee, and testified (page 381, fol. 739,) that he recognized "his handwriting on both papers;" and at page 382, that said paper "40 is an account with Treadwell & Perry; it shows a balanc of $1,097.12 against Littlefield;"

that "39 is an account with Treadwell, Perry & Norton, showing a balance in favor of Littlefield of $804.43, the balance from the Treadwell & Perry account is carried to the Treadwell, Perry & Norton account, and leaves a balance against Mr. Littlefield of $292.69, which is about the amount of his debit on the books of Treadwell, Perry & Norton."

"Q. Do you mean the books of W. & J. Treadwell, Perry & Norton?

A. I do."

This testimony of Rand, together with the above given by the appellee, completely refutes the appellee's testimony that premiums were credited to Littlefield, and that he continued to be indebted to "Treadwell & Perry" after 1854, which is the only reason given by him for the non-payment of premiums.

Fourth. If the court sustain the first ruling of the court below, that the contract did convey such a "legal title" to the patent or invention of eighteen hundred and fifty-one, as would sustain the jurisdiction of the court, then we submit the bills should have been dismissed upon the hearing.

1st. No evidence whatsoever was given to show an infringement, by defendants, of the patent of eighteen hundred and fifty-one, the only patent mentioned in the agreement. On the contrary, the proof was that the stoves manufactured by them embraced only the other and subsequent patents or inventions. (See pages 200, 201, 389, 390, 398, 402.)

An examination of the specification and claim attached to that patent (1851) shows clearly that it could not have been infringed by such manufacture. The only feature of it which it is even claimed to have been used was the fire-

pot, this was not patented; said patent was only for a combination, the fire-pot not forming a part of it; and the use of one element of its combination, would not establish an infringement.

Gould *v.* Rees, 15 Wall. 187.
McCormick *v.* Talcott, 20 How. 402.

The two inventions were essentially and radically different in every view, as appears clearly by the claims and specifications.

The patent of eighteen hundred and fifty-one "was for a new and useful improvement in cooking stoves" (page 3, fol. 12), the object being to adapt them to the combustion of wood or coal (page 4, fol. 13), and the claim (page 5, fol. 15,) was for "the peculiar arrangement or manner of combining the fire-place, the descending and diving flues, the ash-pit, the lateral chambers, the ascending flues, the oven or air heating chamber and its surrounding flue space," and the invention was complete without the "basket," or "fender K" (page 5, fol. 14), made use of when coal was burned. (This fender is called by complainant (page 5, fol. 15,) the "grated fire-pot.") No novelty in the construction of any specified particular part of the stove is claimed or patented, but simply a combination of old elements—flues, oven and fire-place.

The alleged invention, for which an application was then pending for a patent, related to coal stoves, furnaces, etc., and consisted in the "adaptation of a reservoir to the fire grate," or place where fuel is burned, for the reception of the gases arising from the coal. (Page 6, fol. 16.) The applicant proposed to claim, as his invention, "the exterior stove cylinder A, the reservoir D, and the fire-pot C, or their equivalents, arranged and operating as set forth." (Page 7, fol. 19.)

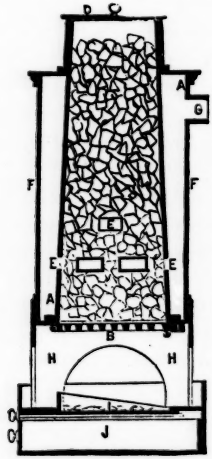
From the very nature of the two constructions there could be no connection between them.

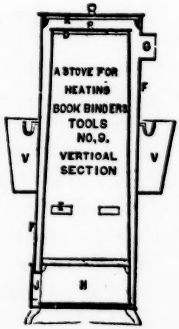
It may well be urged that the agreement did not, in fact, embrace this alleged invention. It recites (page 551,

fol. 980) that, "whereas, the said party of the first part Littlefield) has made application to the patent office, at Washington, for letters patent, securing to him a certain improvement in the invention so as aforesaid patented to him, and said application is now pending," etc., not giving the date of the filing of such application, nor identifying it in other way, but as an "improvement in the invention so as aforesaid patented." It is not to be assumed that said application was necessarily embraced in the agreement, because it was pending when the agreement was entered into; as by its terms it could only embrace such improvements as were applicable to "the invention so as aforesaid patented." Both defendants denied that said alleged invention, set forth in the bill, "was in any manner an improvement in the aforesaid patented invention" (page 161, fol. 348; page 174, fol. 380). And the complainant did not offer proofs to sustain the allegations of the bills in this respect. No expert was examined, and no one was found to testify that said application for a patent, described an "invention," or improvements, that were applicable to said invention and patent of 1851.

It was discovered that this alleged invention was not a new invention; but was old, being anticipated by an English patent styled the "Joyce patent." This was proved upon the trial (see diagram, p. 241, fol. 539; p. 501, 502, fols. 910, 911, p. 511–15, and is not disputed, p. 249, 369, 371).

A copy of the Joyce patent appears in a pamphlet introduced by complainant (Exhibit G, p. 511–15, from which was taken one of the following diagrams, the other being taken from the proofs, page 241):





It has, what is styled therein, a fire-place, being a fire-pot and reservoir for coal, combined in one, shaped like the frustrum of a cone, with fire-grate at bottom and ash-pit below, the upper end closed by a cover, movable in order to supply with coal. At the lower part of the frustrum (supplying cylinder) are apertures for the escape of the smoke, gas, etc., into the external case, which case encloses the frustrum, leaving a space all around it. In one or more of the modifications described in the specifications, the frustrum is entirely enclosed in the external case (p. 121, 515), the cover at the top of the frustrum being within the cover of the external case.

His claim was for a stove "having a space above the fire-place for containing a supply of fuel, which fuel, although it becomes heated, will not be burned," etc. (Page 515.)

All the flame, smoke, gas, etc., emitted from the side apertures is received within the external case near the lower part of the case, and the vent (smoke-pipe) communicates with the upper part of the case, causing an ascending current within the case for the purpose of heating. (See also testimony of the appellee, p. 241, 242, and diagrams; also testimony of Dickey, p. 369-370-1.)

This Joyce invention is also described in the re-issue of the patent of 1854, of May 19, 1863, set out in the supplemental bill. (Page 121.)

This application of 1852 was therefore abandoned; and improvements were made in this class of stoves which employ a "reservoir" for "the reception of the unconsumed gases arising from the burning coal" (page 6, fol. 16, also page 13, fol. 28); and a patent was applied for, which resulted in the patent of January twenty-fourth, eighteen hundred and fifty-four, upon which all of complainant's claims are in reality based; and this, simply upon the allegation that the application for this patent, was "of substantially the same character" as the one that was abandoned. (Page 12, fol. 26.)

This application of 1853 was entirely different from the application of December thirtieth, eighteen hundred and fifty-two. Its specification recited that "stoves for burning anthracite have been contrived, in which a reservoir for the coals has been applied immediately over the fire-pot," etc. (Page 13, fol. 28.) The object of this invention was to "effect a simultaneous combustion of the waste gases with the carbon of the coal." It consisted in the employment of a "cylindrical grated fire-pot, with no solid or unperforated sides," surmounted by a reservoir. (Page 13, fol. 29.) The claim (page 16, fol. 34) was for "the cylindrical grated fire-pot E, in combination with the gas receptacle F," constructed and operated substantially as described."

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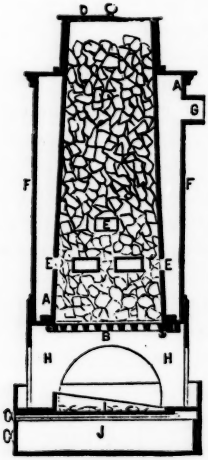

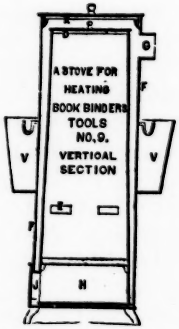

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The "basket K," shown in the drawings of said patent of eighteen hundred and fifty-one, called by the complainant the "grated pot," (page 5, fol. 16) does not meet such description, as a portion of its sides were unperforated (see drawing, page 200, Fig. 4). The "gas receptacle F," or reservoir, was an old device. (See orginal bill, page 13, fol. 28.) The application for a patent pending when the contract was made, did not describe any construction for a fire-pot (pages 6, 7).

Brief, p. 3.

Such a fire-pot as described in the application for the patent of eighteen hundred and fifty-four, with no solid or unperforated sides, against which the partially consumed coals can rest and cool" (page 13, fol. 29), was first shown at the patent office on the twenty-second day of July, eighteen hundred and fifty-three (page 12, fol. 26). This, combined with "a reservoir (which was an old device) for the reception of the gases which arise from the burning of the fresh coal," therein contained (page 13, fol. 29), constituted the invention of eighteen hundred and fifty-four; and thus, upon complainant's own showing, this invention was made and patented subsequent to the date of the agreement; and, therefore, no rights under this patent could pass thereby, unless the invention thereby patented, was in the nature of an improvement in said invention and patent of eighteen hundred and fifty-one, therein mentioned; and this is nowhere alleged in either of the bills, and it appears clearly that it is not.

In other words, the application of December thirtieth, eighteen hundred and fifty-two, was of the character of an original adaptation or invention intended to be the base of all coal stoves and furnaces which might employ a closed chamber or reservoir in combination with a fire-pot or place where fuel is burned. While the application of July, eighteen hundred and fifty-three, and the patent of eighteen hundred and fifty-four, recognized, the fact that stoves and furnaces had previously been invented of the kind specified in the former application, and claimed simply an improvement in this class of stoves and furnaces

invented by Joyce; *i. e.*, a perforated, grated fire-pot, having no unperforated sides, in combination with a reservoir, which was an old device.

It was not alleged that this application for a patent in July, eighteen hundred and fifty-three, was for the same invention as the application that was abandoned at that time, but that it was "of substantially the same character" (page 12, fol. 27). This has already been shown to be untrue; but it will more fully appear by a comparison of the application of 1852, with the last re-issues of the patent of 1854. At pages 129 to 134 is re-issue No. 1813, whereby was granted the following claim, viz: "The combination of a fuel-supplying cylinder with a fire-pot, when the said cylinder has its cover-opening inclosed within a chamber, or space communicating not only with the out-let from the fire-pot, but also with the exit flue, &c., when the case forming said inclosing chamber becomes a part of the stove itself," &c., that is, when the structure has all of its parts united, so as to form a complete organization. (For drawing see page 201.) Brief, p. 34.

The drawings (page 200) of said application of eighteen hundred and fifty-two, show that this claim could not have been granted thereon, as in some of the modifications therein represented, the supplying cylinder and fire-pot appear to be loose and separate from other parts of the device, simply set within an inclosing chamber, so as to be removed therefrom when desirable, which is identical with the Joyce invention (see supplemental bill page 121), while other modifications (Fig. 4 and 5) represented the supplying cylinder as projecting up through and above the chamber inclosing the fire-pot, and did not have their cover opening inclosed within said chamber, so as to prevent atmospheric air from passing thereunder when the furnace was in operation; an invention not produced until devising this invention of eighteen hundred and fifty-three; patent of eighteen hundred and fifty-four. Brief, p. 5 and 6. Brief, p. 8.

At pages from 134 to 136 is re-issue No. 1814, of this patent. (See drawings, page 201.) It disclaims intent Brief, p. 34.

to make openings in the exterior case through which the fire may be seen, but claims "the arrangement, adaptation, and combination with a fuel-supply cylinder stove, of an illuminating case to the chamber which receives light, and the gaseous products of combustion from the burning fuel," &c.

By referring to the specification of said application of eighteen hundred and fifty-two (pages 6 and 7), and the drawings belonging thereto (page 200), it will be seen that this invention was neither described nor represented therein.

Brief, p. 5 and 6.

The next division of this patent (re-issue No. 1815, pages 137, 138) claims:

"*First.* A fire-pot constructed substantially as described, in combination with a fuel-supplying cylinder having its cover opening surrounded by a chamber which communicates with the outlet from the fire-pot, and also with the flue leading to the chimney, when the openings in the fire-pot, or outlets therefrom, are broadest at the bottom."

By referring to the drawings of said application of eighteen hundred and fifty-two (page 200), it will be seen that in the drawings (Figs. 4 and 5) the cover opening to the magazine was not inclosed within the surrounding chamber; but projected up through and above said chamber, and by referring to said specification (pages 6 and 7) it will be seen that no construction for a fire-pot was therein described.

Brief, p. 6.

"*Second.* The combination of a fire-pot constructed substantially as described (none was described in eighteen hundred and fifty-two, see pages 6, 7), with a fuel-supplying cylinder, which has its cover opening surrounded by a chamber which communicates with the outlet from the fire-pot and also with the flue leading to the chimney," &c.

Re-issue, No. 1823 (pages 139, 140), secured the adaptation of a swinging cover so as to admit said cover to be

swung open on a horizontal plane when necessary to supply fresh coal or to cool the stove." The claim was for "a cover so hinged to the top plate of the stove, that it may be swung open on a horizontal plane." The drawings of said application of eighteen hundred and fifty-two, do not represent, nor does its specification describe such swinging cover.

Neither of these five claims, which is all there ever was of this patent of eighteen hundred and fifty-four, were described in, or represented in said application for a patent of thirtieth of December, eighteen hundred and fifty-two; therefore it was not true that said application for a patent, filed in July, eighteen hundred and fifty-three, was of "substantially the same character" as the application that was abandoned.

To the patent of 1854, and its re-issues, then we submit, complainant had not an equitable title; not even an equitable right to a license; but admitting this, the complainant having failed to show an infringement of an exclusive right to any invention to which he had a legal or equitable title, we submit the Circuit Court had no jurisdiction as to any such equitable right. It was a right not recognized by the laws of the United States, but simply resting in contract.

But again, complainant's right, if any, in and to the original patent of eighteen hundred and fifty-four, were not forfeited by the re-issues, if he elected to hold under it.

Potter v. Holland, 1 Fish., 327. S. C. 4 Blatch., 206

He cannot claim both rights, but must make such an election. He has made it by setting up, in his supple-

mental bill, the re-issues of that patent in 1864, and claiming rights under them.

The surrender thus adopted annulled and extinguished all right of action by him in this suit, for an infringement of the original patent, or the first re-issues thereof, set out in the original bill, and any action pending thereon abated.

Suits pending for the infringement of an original patent, fall with its surrender for a re-issue, because the foundation upon which they rest no longer exist.

Moffat *v.* Garr, 1 Black., 273.

And this cannot be helped by a supplemental bill; that must find its support in the original bill. If all cause of action, under the original bill, is surrendered and cancelled, and the complainant acquiesces in such surrender, the supplemental bill must fall with it.

Complainant having failed to show an infringement of the patent of eighteen hundred and fifty-one, and having relinquished his claim under the patent of eighteen hundred and fifty-four, set forth in the original bill, nothing was left to sustain this action.

2d. But if there should appear to be any technical violation of the complainant's right in or under the patent of eighteen hundred and fifty-one, we submit this gave no jurisdiction to decide upon the equitable right to the subsequent inventions.

The rule that where a court of equity once acquires jurisdiction of the subject-matter it may proceed to give relief as to such subject-matter, does not apply; it was not the same subject-matter.

The subject-matter over which jurisdiction was acquired was the patent or invention of eighteen hundred and fifty-one; the subject-matter of which further jurisdiction is claimed is an equitable partial interest and right given by a contract in and to other inventions secured by other and subsequent patents, a subject entirely independent and distinct.

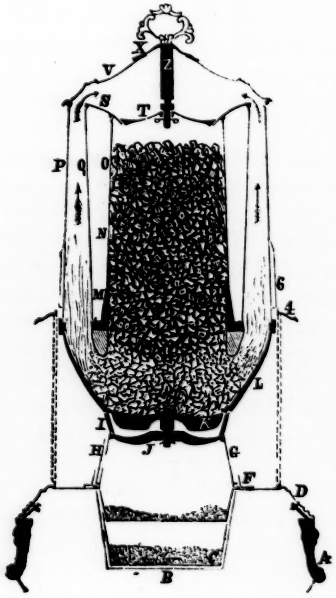
Fifth. The interlocutory decree, or decretal order, is erroneous in holding and adjudging that complainant had an exclusive right to the use of all of the inventions covered by all of the patents and the re-issues thereof set out in both bills.

As to the original patent, and the re-issues of the same, set out in the original bill, and which were surrendered and cancelled at the time the supplemental bill was filed, the complainant waived his right to the "gains and advantages" under them, when filing his supplemental bill, and claiming the same under the patents last issued; and as to three patents set forth in the bills, to wit: the patent of June twenty-fifth, eighteen hundred and sixty-one, set forth in original bill (pages 18, 19) the patents of December ninth, eighteen hundred and sixty-two, and August eighteenth, eighteen hundred and sixty-three, (all of which were granted many years after the date of said agreement): and the re-issue of the last, under date of December twenty-second, eighteen hundred and sixty-three, set forth in the supplemental bill (pages 141 to 146, and 147 to 152), it was not alleged that they were for improvements, or that they embraced improvements in the inventions specified in the contract; and it was denied that "Treadwell & Perry," or the complainant ever had any right in these patents.

By examination it will be perceived that all these patents cover inventions and improvements, which, although some of them may be applied to the stove as patented January 24th, 1854, yet are equally applicable to other stoves and furnaces using a supplying cylinder. Thus, the patent of June 25th, 1861, is applicable to the Joyce invention, and properly speaking, is an improvement therein; also the patent of December 9th, 1862; which patent covered, among other things, a new grate, termed a "mill grate;" a new fire-pot; a differently shaped outer case; adapted to carry out a different principle; a central chamber above the supplying cylinder; a dividing flue and a sliding plate, to direct the draft (pages 142 to 147), all essentially different and distinct in idea and object or purpose to be

accomplished from the invention embraced in the patent of eighteen hundred and fifty-four; which was also, an improvement, in the Joyce invention; while the invention secured by the patent of 1863 could not be applied to the invention of 1854, or to the Joyce invention, without completely changing their peculiar construction; and even then, as the appellee himself testified, the mill grate and sliding plate were equally applicable to all magazine stoves. (Page 240, fol. 538.)

Again, the appellee in testifying as to constructions under a patent obtained by Littlefield in 1856, and manufactured by E. Corning & Co., of which the following is a diagram (page 200), testified (page 207, fol. 492) that this



stove was "constructed upon an entirely different principle" from the stove, patent of 1854. That Littlefield "proposed that (they) should enter into a new contract with him, for the manufacture and sale of this stove." That such contract was declined "because, among other reasons, (they) were unwilling to pay him $3.00 premium on them." Testified (page 389, fol. 751) that he approved of Littlefield's contract with Corning & Co. for the manufacture of this stove, "as it was an entirely different stove" from that of 1854.

On his cross-examination (page 226), he testified that the air to support combustion, passed up in each of those stoves, (patent of 1854, and 1856) through the grate over the ash-pit. That it passed out through the sides of the fire-pot, in the stove of 1854, and from the top of the fire-pot in the stove of 1856. "In case of the (patent of 1856) it burns from the bottom vertically. In case of the (patent of 1854) it burns from the bottom horizontally." In both stoves "the coal is brought to the point of combustion in the same manner."—"Both in reservoirs;" "the only difference is in the form of the fire-pot."

If this testimony was true, it was equally true that the constructions patented on the 9th of December, 1862, and August, 18th, 1863, which patents were brought into the case by the supplemental bill, were not constructed upon the same or similar principles as the stove described in the patent of 1854, for the reason that their fire-pots are entirely different from the stove of 1854; being so constructed that the coal will burn "from the bottom vertically," the same as described in the patent of 1856, and not from "the bottom horizontally" as described in the patent of 1854.

This decree in substance decides that, by this contract, the inventor Littlefield transferred, not only an interest in the invention already recognized, and for which a patent had been issued; not only an interest in the alleged invention for which an application had been made; not only an interest in the ideas, vague and visionary, the

"airy nothings," to which the invtenor had not as yet given a "local habitation and a name," but also an interest in all the future creations of his inventive genius which could, by any possibility, be applied to stoves, which employ a reservoir to receive the gases, and hold in reserve a supply of fuel.

We submit this contract cannot thus be interpreted, and if so interpreted cannot be sustained; that the old elementary rule that the sale of a thing not in *esse* at the time will not operate to transfer a title when they come into existence, cannot be thus entirely abrogated.

Again, conceding complainant's claim to the patents of eighteen hundred and fifty-one and eighteen hundred and fifty-four, and the re-issues; they are one and all for improvements, not for original devices. There is a marked distinction in cases of alleged infringement upon original devices, and where the infringement is claimed to be upon an improvement.

"While a patentee of an original device or machine may treat as infringers all who make machines operating on the same principles and performing the same functions by analagous means or equivalent combinations, even though the infringing machine may be an improvement of the original, and patentable as such. But if the invention claimed be itself an improvement on a known machine, by a mere change of form or combination of parts, the patentee cannot treat another as an infringer who has improved the original machine by use of a different form or combination performing the same functions." McCormick v. Talcott, 20 How. 402, 404, 405.

This is because the latter forms and combinations are considered as improvements upon the original machines,

not as improvements upon the improvements. Complainant claims a right in these subsequent patents under the clause of his contract transferring all improvements. If the court hold this to be valid, the language certainly should not be extended. If this contract is held to be an equitable transfer of all improvements upon the improvements specified, it does not convey all improvements upon the original device,; and by manufacturing such improvements we were not liable, and all improvements upon the Joyce and other prior inventions should have been excepted from the decree.

Sixth. The said decree is erroneous in adjudging that complainant recover all the profits, etc., which defendants have received, and which have accrued from the manufacture and sale of stoves, embracing any of the improvements described in, and covered by, any of the letters patent mentioned.

1st. Complainant having elected to accept and claim under the last re-issues of the patent of 1854, which were granted in November, 1864, he extinguished and cancelled all claims for infringement of the original and prior re-issued patents. (Mofft v. Garr, supra.) And the decree should have been so limited.

2d. The allegations of the bills, the specifications and claims of the patents show that they were for certain improvements—not for an entire new stove. Some, and indeed most of them, were but for small portions of a completed stove; most of the parts were in common use, not patented as far as appears, at least not claimed. Thus, take the main patent of 1854, it states (page 13, fol. 28) that "stoves for

burning anthracite have been contrived, in which a reservoir for the coals has been applied immediately over the fire-pot, in such a position that as the fuel is consumed that in the reservoir descends and supplies its place; and then proceeds to describe the improvement claimed as new, which is simply a perforated grated fire-pot in combination with a supplying cylinder.

The Morning Glory No. 1, made in 1862, embraced the combination of the patent of 1854, employing the new fire-pot, patented June 25, 1861, (Page 201, diagram; also page 398.)

Brief, p. 18, 22.

The Morning Glory No. 2, embraced a part of the invention of 1854, as re-issued November 8, 1864, using an entire different fire-pot, which was patented December 9, 1862, with no perforated sides, but with combustion mouths or openings at the top (page 201, diagram; also page 398), a new grate styled a "mill grate," a hinged cover at top, etc., a differently formed case, adapted to carry out a different principle, a sliding-plate and changed flues, in fact, using but little of the original patent or its reissues.

Brief, p. 33.

Brief, p. 36.

The Morning Glory No. 3 embraced the same inventions as the No. 2, except the fire-pot was suspended in a separate chamber (page 201), as described in and covered by the patent of August 18, 1863, or the re-issue thereof, December 22, 1863; (page 398,) so that it will be perceived these stoves, which are all that are claimed to be infringements, contained comparatively but little of the invention covered by the patents of 1854 or its re-issues, and certainly none of the invention secured by the patent of 1851; and yet defendants are required to pay all the profits made upon the whole of these stoves.

Brief, p. 39.

If this is equitable, then it follows, using the language of Mr. Justice GRIER, in Seymour v. McCormick, 16 How. 480–490, it would be equitable

"that each one who has patented an improvement in any portion of a steam engine, or other complex machine, may recover the whole profits arising from the skill, labor, material and capital employed in making the whole machine, and the unfortunate mechanic may be compelled to pay treble his whole profits to each of a dozen or more several inventors of some small improvements in the engine he has built." "By this doctrine," said that distinguished jurist, "even the smallest part is made equal to the whole."

We submit allowance should have been made at least for the portions not patented; that the measure of damages is not the profit made upon a whole stove, but the enhanced value in consequence of the improvements; or as the rule is laid down in Mowry v. Whitney, 14 Wall. 620, "The infringer is not liable to the extent of the entire profits in the manufacture. The rule is, what advantage did the infringers derive from using the invention, over what he had in using other processes open to the public. The fruits of that advantage are his profits, and that advantage is the measure of profits to be accounted for."

In that case the master reported that he could not make a division of the profits, and so gave complainant the whole, yet his report was set aside. Here there is nothing to indicate that such a division could not have been made. But the master, h[illegible]
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To illustrate the effect of the rule adopted in this case, apply it to the original patent of eighteen hundred and fifty-four, where the claim (page 16, fol. 34), was simply for a combination of two elements. Suppose the different parts of that combination were each separately patented. If we are

held to have infringed we are made liable here for all the profits, and are subject to an action at the suit of each separate patentee, and each can recover the whole profits also.

Seventh. The said decree is erroneous in that it does not specify in what manner or to what extent the right of the complainant has been infringed upon by defendants; it does not specify which of the patents set forth in the bill have been violated, or what particular invention or inventions have been infringed upon, but merely states in general terms that the defendants "have infringed upon the exclusive rights of the complainant." An infringement of any one of the numerous claims, covered by any of the numerous patents set forth in the bills would meet this general finding, and we submit this decree is too vague and indefinite to settle the right of the parties or to give a basis upon which the master could intelligently take and state the profits.

Eighth. The denial of defendants' motion, to refer the report back to the master, with instructions that he proceed in accordance with the practice in such cases, was error.

By referring to said order (page 194) it will be perceived that it was conditional, "upon the complainant filing with the clerk a stipulation, to the effect that the exceptions taken by the defendants to the master's report may stand for hearing with like effect as if the parties had

been summoned before the master;" a sort of compromise between the court and complainant's counsel. We contend that this proceeding was irregular; that said exceptions could not, from the nature of the case, stand with "like effect" before the court as if they had first been made before the master. If the master, after fixing the draft of his report, as is the practice in the State of New York, had submitted the same to the parties for their objections, they would have been made before him; and some of the manifest errors in said report might have been remedied, at least the report might have been made more specific and definite, so as to show clearly and certainly what was intended, and reference would have been made to the specific evidence supporting each proposition, so as to enable defendants to examine and criticise, and make their exceptions definite and certain.

Ninth. The master's report contains many manifest errors, and should have been set aside or referred back to the master.

1st. The neglect of the master to state, specifically, the proofs presented and relied upon by him to sustain each finding or conclusion arrived at, as required by the seventy-sixth equity rule, seriously embarrassed the appellants in framing the exceptions to the report, and as seriously embarrass any discussion or consideration of such findings or conclusions, as, in consequence, it is left somewhat a matter of doubt and conjecture just what views he took of the evidence, and precisely what he intended to decide. (7th exception, page 192; also 16th exception, page 193.) We submit this is error, and the error is not corrected by the supple- Brief, p. 60, © 61.

mentary report filed. 1st. The master had no authority to file such a report, and it cannot be considered. 2d. Such supplementary report does not remedy the error, as it simply states, generally, the proofs that were presented.

2d. The master should have reported the profits, etc., received by defendants from "infringing upon the rights of the complainant by the manufacture" of stoves containing the said improvements. (1st exception, page 191.) This was the direction contained in the decretal order. In case the evidence failed to show what proportion of the profits arose from the use of the inventions infringed upon, he should have so reported. (2d exception, page 191), instead whereof he has reported "the amount of gains and profits made by the defendants in and by the manufacture, use, or sale of said stoves." In other words, he has reported all the profits upon the whole stove. We submit he should not have exceeded the order of reference.# Much testimony was introduced from which he might have well found that a fair proportion of the profits realized was for the unpatented portion, or portions patented by other patentees, and owned by the appellee, and not claimed by him in this suit (see replies to interrogatories 2479—80, 81—page 797; also, 2487, page 798); also testimony as to what patent rights were infringed upon, so that, inasmuch as the final decree did not specify or determine, the master might determine. But this question, notwithstanding it was thus proved before him, that the appellee controlled patents that were infringed by the No. 3 Morning Glory, and that the defendants were liable in another suit by the appellee, for such infringement, was not passed upon or considered by the master. He considering himself bound by the decretal order. (Page 190, fol. 436.)

Brief, p. 57.

Brief, p. 57.

and having done so the report was defective and the decree founded thereon erroneous. Livingston vs Woodworth 15 How. 546

3d. The master should have reported, specifically, what particular rights of the complainant were infringed upon (9th exception, page 192), in order to furnish a basis upon which to found a calculation of the profits derived from an infringement upon those rights, inasmuch as no such specification was contained in the order. Brief, p. 60.

4th. The master also exceeded the order of reference in reporting the "estimated profits on odd castings, mica and soapstone connected with said stove business, also estimated profits on castings." (5th and 6th exceptions, p. 192.) The decretal order limited him to the profits accruing from the manufacture, use and sale of stoves containing said improvements. (See order, p. 187, fol. 425.) We submit with the full measure of relief granted by said order, the master ought not, in justice or equity, to have gone beyond it, even if he had authority, and certainly he had no authority so to do. These items, thus allowed by the master and given to complainant by the final decree, amount to (p. 189—190, fols. 234–6), $2,356.84. Brief, p. 59, 60. Brief, p. 48 to 50.

15 How. 576

5th. The master committed a manifest error in his statement of estimated profits upon the stoves. (17th exception page 193.) This was, as appears by the paragraph preceding the tabular statement, founded upon "number and average profits apiece upon said stoves." (P. 189, fol. 433.) Brief, p. 61. Brief, p. 48.

Two classes of evidence were presented before the master upon the question of profits:

1st. The cost and the selling price of the "Morning Glory" stoves, made by defendants, which were claimed to embrace some of the inventions in question.

2d. Evidence as to the general profits of defend-

ant's whole business and the proportion thereof which arose from the sales of these stoves.

The master, as appears from his report, adopted the first class, and based his report thereon, discarding the second as too indefinite.

The accountant whom he employed, Mr. Zweers (a clerk of complainant, page 773), presented tables taken from defendant's books, showing that defendants manufactured six sizes of the stoves. The number of each size sold for the years eighteen hundred and sixty-two, three, four and five, amounts for which they were sold (page 669), and the average prices received for each size (pages 668 and 675, fol. 1291). This the master evidently made the basis of his report, as he refers to them therein, and as the number of the stoves stated by him are taken from such tables. A great amount of testimony was presented as to the cost, but no table was presented, and no estimate given as to the actual profits, save that of one of the defendant's (page 635), as follows:

On No.	9,	from	$2 00	to	$2 50
"	10,	"	3 00	"	3 50
"	11,	"	4 50	"	5 00
"	12,	"	6 50	"	7 50
"	14,	"	10 00		
"	16,	"	12 00	"	14 00

Many items to be taken into consideration in order to arrive at the net profits, did not appear as items of cost, such as bad debts, expenses, internal revenue taxes, rents, etc. The master averages the net profits upon a stove of each of the six numbers for each of the years (page 189, fol. 433), and multiplies the whole number of stoves sold during the year by that average, and thus arrived at the estimated profits for the year. (Pages 189–190.)

Brief, p. 48.

Brief, p. 48 to 50.

Had equal numbers of each of the different sizes

been sold, the figuring would have been correct, but very many more of the smaller sizes upon which a profit less than the average was made, were sold than of the larger, upon which the profit was greater, and as appears clearly, the percentage of profit also upon the smaller sizes was much less than upon the larger, and thus the master inadvertently, doubtless, has fallen into a grave error. To illustrate the injurious effects of this error upon us, we will concede the percentage of profit to be the same upon all the sizes, taking the average profit fixed by the master, for each year, and the average prices of the stoves as shown in the schedules produced by the accountant (p. 668–675), it will be ascertained that the percentage of net profits fixed by the master to be as follows:

For 1862, 28 per cent and a small fraction.
" 1863, 23 " "
" 1864, 23½ " "
" 1865, 22¾ " "

Now, taking the average price of each of the different sizes as stated (pages 668, 675), and multiplying by this percentage we will arrive at the profits on each size as estimated by the master, and multiplying this by the number of stoves of that size sold, we can arrive at the profits as they should have been stated.

The following tables present such a calculation for the years specified:

Sizes sold.	Prices.	Per cent.	Profit per stove.	No. of stoves sold.	Whole profit.
1862.					
No. 9....	$12 54	28 22/100	$3 54	463	$1,639 02
10....	14 64	...	4 13	587	2,424 31
11....	16 73	...	4 72	470	2,218 40
12....	18 60	...	5 25	194	1,018 50
14....	23 99	...	6 77	34	230 18
16....	30 43	...	8 59	19	163 21
Total...	$116 93	...	6 $33 00	1,767	$7,693 62
Master's estimate.....			$5 50		
1863.					
No. 9.. .	$13 85	23	$3 18	749	$2,381 82
10....	15 94	...	3 67	1,072	3,934 24
11....	18 61	...	4 28	885	3,787 80
12....	20 52	...	4 72	443	2,090 96
14....	27 51	...	6 33	93	588 69
16....	33 99	...	7 82	55	430 10
Total...	$130 42	...	6 $30 00	3,297	$13,213 61
Master's estimate.....			$5 00		
1864.					
No. 9....	$17 46	23½	$4 11	785	$3,226 35
10....	20 12	...	4 73	948	4,484 04
11....	22 30	...	5 25	854	4,483 50
12....	24 35	...	5 73	663	3,798 99
14....	37 16	...	8 75	192	1,680 00
16....	44 31	...	10 43	99	1,032 57
Total...	$165 70	...	6 $39 00	3,541	$18,705 45
Master's estimate.....			$6 50		
1865.					
No. 9....	$17 48	22¾	$3 98	32	$127 36
10....	20 71	...	4 71	64	301 44
11....	22 76	...	5 18	36	186 48
12....	25 13	...	5 72	33	188 76
14....	39 83	...	9 06	8	72 48
16....	45 50	...	10 35	4	41 40
Total...	$171 41	...	6 $39 00	177	$917 92
Master's estimate.....			$6 50		

Profits as stated by the master:

1862	$9,738 50	
1863	16,485 00	
1863–5	24,167 00	
		$50,390 50

Profits as above ascertained:

1862	$7,693 62	
1863	13,213 61	
1864	18,705 45	
1865	917 92	
		40,530 60
Amount of error . . .		$9,859 90

In stating profits for 1862, the master has made a mistake of $20, as appears by his own figures; 1767 stoves were sold that year (page 189, fol. 434). Brief, p. 48. He estimates the profits on each at $5.50. This gives a total profit of $9,718.50, instead of $9,738.50, as stated.

Taking the master's estimate of the average profits apiece as above, and proportioning it according to the defendant's statement of gross profits (page 635, reply to interrogatory 1,050), and the amount of error would appear to be $17,008.21. It cannot be contended that the master, in determining the average profits apiece of the stoves, took into consideration, the numbers as well as the prices, as the terms he uses and the tables he caused to be prepared, and upon which he based his calculations, show to the contrary. But if it shall be so held, we submit the average then embraces so many elements that it is a mere vague conjecture (16th exception, page 193), with no calculation or evidence to found it upon, and in that view it cannot be sustained. Brief, p. 61.

City of New York *v.* Ransom, 23 How. 487.
Livingston *v.* Woodworth, 15 id. 546.

6th. The estimate of profits upon the stoves, as it is stated, is most excessive and exorbitant, and is entirely unsupported by any legitimate evidence in the case. (13th exception, page 193.)

Brief, p. 61.

Take for example the year 1862, the whole amount of sales of the Morning Glory for that year, as per statement (see page 669), was $27,267.14. The master allows for net profits $9,738.50, or nearly thirty-seven per cent. of the sales. In order to have realized this profit, the gross profits must have been more than fifty per cent. of the sales, as the many items of expenses, revenue taxes, interest, rent, office expenses, bad debts, etc., would swell it up beyond that figure. In other words the stoves must have sold for more than double the cost. This is nowhere pretended, the average percentage of profits was stated to be twenty-five to thirty per cent. gross, or thirty to forty per cent. on the cost. (Pages 576, 592. Replies to interrogatories 272, 524.) We submit the percentage, as stated in the 2d sub., is certainly all that equity can allow to the complainant if it be held that he is entitled to all the profits made upon the whole stove. A Court of Equity can award only actual damages, it cannot be turned into an instrument for punishment.

Livingston *v.* Woolworth, 15 How. 559.

7th. There are various other errors in the report specified in the exceptions, for which we respectfully ask the consideration of the Court.

Eighth. The final decree is erroneous. The master's report only authorized a decree for $52,747.82 (page

190, fol. 436). We submit that interest should not have been added. Brief, p. 50.

Silsby *v.* Foote, 20 How. 378, 386.

This is expressly held in

Mowrey *v.* Whitney, 14 Wal. 620, 653.

Ninth. We submit the decree appealed from should be reversed, with costs.

H. E. SICKELS,
for Appellant.

SUPPLEMENT

TO

BRIEF OF ARGUMENT.

The first opinion in this cause (page 33), *held*, that, "the bill * * * was filed by the plaintiff, for the infringement of certain patents, granted to D. G. Littlefield, one of the defendants, for improvements in stoves; of which she claims;"—(not the exclusive right to make and vend stoves, containing said improvements), but "the exclusive right by assignment, to the territories of the States of New York and Connecticut; and among other things prays for an injunction, enjoining the defendants against further infringement." That, "the answer sets up as the sole grounds of defense, that the letters patent under which the plaintiff claims title, had not been duly assigned to her; or in the words of the answer, had not been legally assigned and transferred to Treadwell & Perry, and from Treadwell & Perry, through various parties to the complainant Mary J. Perry," complainant. Also, that "the bill sets out various assignments, deducing a title from the patentee, * * * to the complainant."

This opinion, has been the pivot, upon which the case has turned, and all of the subsequent opinions are founded thereon; yet, the learned and distinguished judge, who wrote it, evidently did so, under an entire misapprehension of the bill; that sets forth certain patents for improvements in stoves and furnaces, and the complainant claimed, not the exclusive right to the patents, but "the exclusive right within the territory of the States of New York and Connecticut, to make and vend stoves embracing the essential features

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of the stove described in the letters patent" (see bill, p. 28, fol. 56), and it alleges that "the said defendants have and do infringe upon and violate the exclusive privileges of making and vending the stoves aforesaid" (p. 29, fol. 57), and the assignments of the contract as set forth in the bill, show upon their face, no title in complainant to said contract, but on the contrary, that the title thereto, still remains in "Treadwell & Perry." (p. 28.) Whenever an attempt was subsequently made to present these two questions, of the rights acquired under the contract, and of complainants right thereto, the doctrine of "*res adjudicata*" has been successfully invoked, to prevent an examination thereof. The attention of the learned judge was evidently diverted from the pleadings to an affidavit which presented another question, as he adds, "an affidavit is produced on the part of the defendants, showing that the firm of W. & J. Treadwell, Perry & Norton, became insolvent in the year 1860; and that all of its effects passed into the hands of a receiver; and that two of its members were the persons composing the firm of Treadwell & Perry; to which the patents in question had been assigned; and through whom the complainant claims title. This evidence is offered for the purpose of disproving the title of complainant," &c.

This language shows, that it was then established in the mind of the court, that the defendants admitted that the patent, mentioned in the agreement, had been legally assigned to Treadwell & Perry; that the subsequent patents were but improvements thereon; and that complainant's title to said contract, as presented by the bill, was perfect.

Under this impression, the injunction was granted; and nothing could have been more proper, had the original bill, and the admissions of the defendants, made such a case.

The second opinion (p. 76, fol. 159) was upon a motion to dismiss the bill.

On this motion the question raised was as to the jurisdiction of the court, when it was *held*, "That the contract or agreement between D. G. Littlefield and Treadwell & Perry, 5th April, 1853, vested in them a legal title to the patent, 15th April, 1851, and an equitable title to the

improvements for which an application was then pending for a patent; which afford sufficient ground for the maintenance of this suit in equity for an infringement of the same; and that the proper remedy is in this court. The complainant stands in the place of Treadwell & Perry."

Here the learned judge also evidently only looked at the first part of the agreement (p. 8), which in terms granted upon certain conditions and stipulations, the patent of 1851, without regarding the reservations in the second part of the agreement (pp. 9, 10, 11), which changed this apparent grant into a license merely. The same judge heard and denied this motion, who granted the injunction; and simply reiterates his former conclusions, without a critical examination of the pleadings, as must be apparent upon such an examination of the original bill (pp. 3 to 31).

The last opinion given was upon a motion for an attachment as for a contempt, in violating the injunction.

It states that said injunction "restrained the defendants, from making, using or vending the inventions, and improvements in stoves described in letters patent to D. G Littlefield, one of the defendants, bearing date 15th April, 1851, the 24th January, 1854, the 25th June, 1861, and the 19th November, 1861, or either of them, in the States of New York and Connecticut. The court has heretofore held that the agreement between Littlefield of the one part, and Treadwell & Perry of the other, dated 5th April, 1853, vested the latter with the legal title to the patent of April 15, 1851, and with an equitable title to any and all the improvements then made, or thereafter to be made upon the same; and further, that the patents of January 24, 1854, and of June and November, 1861, embodied the principle, and were but improvements upon the patent of April 15, 1851, and of the inventions and improvements embraced in the application to the patent office for a patent, dated December 30, 1852, and which is referred to specially in the agreement between the parties."

It is evident, from the record and the previous opinions, that the court upon the former occasions, had no means of

knowing as to the relations of these patents to each other, further than the allegations of the original bill. The original answer raised no such issues. The first opinion so states; and, for this reason, this question was not presented, or considered, at that time. The court was therefore evidently in error, in stating at this time, that this question had been before discussed, and passed upon. The opinion proceeds, "this opinion which was entertained, and upon the strength of which the injunction was issued, is confirmed by further consideration, and after a personal examination of stoves constructed in conformity with the several improvements."

On this motion the defendants could not be permitted to show that the injunction was improperly granted; or that the invention of 1854, and of 1861, were not improvements upon the invention of 1851. The only question was whether the injunction, had been violated, and so the court viewed it, as appears by the opinion, which continues thus:

"We are also entirely satisfied, after the examination of samples of the stoves, which it is admitted the defendants have been engaged in manufacturing, using and vending since the injunction; and also after a very full consideration of the facts in the case, presented by the respective parties, that the defendants are guilty of an infringement of the injunction. Indeed, on the argument, they scarcely denied the infringement; if the construction previously given to the agreement, by which the interest in the patents and improvements of Littlefield in stoves, was vested in the complainant; was adhered to. We have referred to this opinoin, or construction of the agreement at this time, not because it has any reference to the motion now before us, but because it was particularly noticed by the defendants, and also for the reason, the production of specimens of the various improvements in the stoves, afford a better opportuntity for examination of the question, than when the case was formerly before us. We do not revise the grounds of the judgment of the court in granting the injunction, on a motion for an attachment for an infringement of the writ."

This opinion simply conforms to those previously written; and reiterates what was then determined, save in respect to

the connection of the patents, and this was not discussed, or considered formally upon proofs, or as a point to be decided at that time.

These are all the opinions in the case, and all were written before the coming in of the proofs, and prior to an examination by the court, of the defendants amended answers. The interlocutory decree or decretal order does not conform to these opinions, but is in fact inconsistent with them. It simply holds that the original complainant, and the appellee as her representative, has; not the legal title to the patents, but "the exclusive right within the States of New York and Connecticut, of making, using and vending to others to be used, stoves embracing the improvements mentioned in, and covered, by the several letters patent" (p. 187, fol. 424); and that defendants had infringed upon this exclusive right, without specifying in what particulars; and thus after getting a foothold in court, under decisions shown to be erroneous by the original bill; holding that the agreement set forth in said bill, conferred "a legal title" and "an exclusive right" to the patents; it is retained, after it is made to appear, that the right acquired, was only a license; because the question is considered "*res adjudicata;*" and so also, the question, as to the connection of the patents with each other, it being determined upon the same plea, without regard to the testimony, or the pleadings.

By this decree no permanent injunction was granted, no requirement of an assignment or transfer to complete any equitable title, as claimed in the bill (p. 28 fol. 56); but the action is in substance resolved into a legal action for damages.

Dec. 14. 1864. Reid

SUPREME COURT

OF THE

UNITED STATES.

DENNIS G. LITTLEFIELD, &c.,
Appellants,

AGAINST

JOHN S. PERRY, *Trustee*, &c.,
Appellee.

Preliminary statement to "Points prepared by Counsel for Appellee."

The patents on which the original bill was filed in August, 1862, and for the infringement of which the profits thereby made were adjudged to the appellee, by the Court below, are four in number. That issued April 15th, 1851; that granted January 24th, 1854, and reissued in two parts November 19th, 1861; and that issued June 25th, 1861. These several patents will be found set out in the bill from page 3 to 27 of the Record.

To this bill, the appellants answered by generally denying the title of the appellee, (p. 31), and on p. 33 will be found the order of Judge Nelson granting an injunction. From page 34 to page 46 will be found the amended answer of Jagger, sworn 19th December, 1862; and from page 46 to 75 that of Littlefield, sworn the same day. On the 27th of December, 1864, the complainant, in the original bill, having died, the appellee was by order (p. 99) permitted to file a Bill of Revivor and Supplement. This bill, which commences at page 100, was sworn January 25th, 1865.

In the amended answer of Littlefield, at page 64, will be found the averment of the surrender and re-issue, on the 18th of August, 1862; of the re-issue, in two parts, of the Patent of January 24, 1854, on which the original Bill was filed; and the same answer sets out (pp. 50 to 52), the assignment to Treadwell & Perry, on the 10th of September, 1853, of the exclusive right to make furnaces which had been excepted out of the assignment of April 5th, 1853—thus vesting in Treadwell & Perry the entire and exclusive territorial right for the States of New York and Connecticut, to the inventions and patents intended to be transferred to them by the assignment of April 5th, 1853.

Whilst, it is submitted that, without such exclusive territorial right, this suit could be maintained in equity—all parties in interest being before the Court—and that without it, and under the assignment of April 5th, no surrender and re-issue of the patents therein referred to could be so made by Littlefield, without the assent of the owner of that assignment, as to affect her rights—it is nevertheless quite clear, that with such exclusive territorial right, such owner might even at law be joined with the patentee as a party plaintiff, and that no surrender and re-issue could be made which would affect such owner's rights without her prior assent or subsequent approval.

It may be urged, that this agreement not having been relied on in the original bill, cannot be here insisted upon. But the answer to this is, that whilst we claim no relief under it, this Court will, when it finds the agreement set up in the very answer which sets up the surrender and re-issue of patents on which we rely, take notice if necessary of the fact of such transfer for the purpose of holding that no such surrender

could be made as would, without the assent of the complainant, affect her rights; and in this connection it is proper to call attention to the fact, that in the Bill of Revivor and Supplement, it is averred and not denied in the answers thereto, that all the surrenders and re-issues of the patent of January 24, 1854, subsequent to the re-issues of November, 1861, set out in the Bill, were without the knowledge or assent of the owner of the assignment of April 5th, 1853. (See Record, pages 102, 108, 119, 129, 139.)

The appellee does not claim under any re-issues, except those in the original bill. In addition to the patents relied on in this Bill, two are set out in the Bill of Revivor and Supplement for improvements as conceded upon the Stove described in the patent of January 24th, 1854, and its re-issues—one dated December 9th, 1862, the other dated August 18th, 1863. These were so set out to show that the improvements therein patented passed under the assignment of April 5th, 1853, and therefore that the appellants could not claim to deduct any supposed value of those improvements from the Stoves they had been manufacturing, upon the theory, either that they belonged to the appellants, or were public property. In fact no such claim is made by appellants, nor is there any proof on the subject.

If the right to the patent of January 24th, 1854, for New York and Connecticut passed under the assignment of April 5th, 1853, it is clear that the improvements patented in December, 1862, and in August 1863, also passed, and the enquiry therefore is, did this right thus pass to the improvements described in the patent of January, 1854. It is quite clear that it did if they were either improvements upon the Stove described in the patent of April, 1851, or were improvements described in the application for a patent mentioned in the assignment of April 5th,

1853, for these and all improvements therefor, were in terms expressly assigned by that instrument, as completely as were those patented April 15th, 1851. The enquiry then is did the improvements patented in January, 1854, thus pass; either as improvements on the invention patented in April, 1851, or as described in the application referred to? It is plain from the proof and especially from the admissions and conduct of Littlefield, that the improvements patented January 24, 1854, were intended to be, and were conveyed to Treadwell & Perry.

1st. They were improvements on the invention patented in 1851; were completed in the fall of 1852, and consisted generally in combining the supplying cylinder with a grated fire-pot, in constructing and combining an illuminating case, an enclosed cover to magazine and a horizontal swinging cover to the outer cylinder. This Littlefield states at pages 47, and 450, &c.

2d. It is entirely clear, also, that the application referred to in the assignment of April 5, 1853, was dated December 30th, 1852, and though rejected because of too broad a claim, this application described not only the identical improvements, afterwards patented January 24, 1854, (Record, p. 1064), but the application was renewed in June, 1853, and resulted in the granting of that patent upon modified claims. That these were intended to be, and actually were transferred to Treadwell & Perry, is abundantly shown by portions of the Record, referred to in the "additional Points prepared by counsel for Appellee," to which the foregoing is intended as a preliminary statement.

E. W. STOUGHTON,
JOHN H. REYNOLDS,
for Appellee.

SUPREME COURT

OF THE

UNITED STATES.

DENNIS G. LITTLEFIELD and IRA JAGGER, Appellants,
vs.
JOHN S. PERRY, Trustee, and Executor of MARY J. PERRY, deceased, Appellee.

Additional Points prepared by Counsel for Appellee.

From the answers of the defendants, their testimony and admissions, and entries in their books, every fact necessary to entitle the appellee to maintain this action, and to recover the amount adjudged to him by the Court below, is established. Before considering them, as we shall briefly do, we will call attention to some of the improvements patented by Littlefield, and owned by the appellee, which enter into and form, as stated, indispensable parts of the stoves in question.

FIRST. The appellants were prosecuted for infringing several patents for improvements owned, as aforesaid, by making stoves, called the "Morning Glory," and designated as Nos. 1, 2, 3. That these contain inventions patented to Littlefield, January 24, 1854, December 9, 1862, and Aug. 18, 1863, is admitted by the appellants in their several answers, who aver that they use, and intend to continue to use, the same.

Answer of Jagger, Record pp. 175, 178.
" Littlefield, " pp. 172, 183, 184.

If, therefore, these several inventions thus patented were, by the agreement of April 5th, 1853, vested in the appellee, the appellants clearly infringe.

SECOND. That agreement was intended to, and did transfer to Treadwell & Perry, the improvements in stoves patented April 15th, 1851, those described in the application of December 30th, 1852, and all additions to and improvements upon either of the same. The effort of the appellants is to establish that the patent of January 24, 1854, was not for improvements, or additions upon the improvements patented April 15, 1851; that the application of December 30th, 1852, was not, and that, on the withdrawal of this, in June, 1853, the application made in place thereof, which resulted in the patent of January 24, 1854, was not. If the right to the improvements described in this last-named patent passed to Treadwell & Perry, it is not denied that those patented December, 1862, and August, 1863, also passed, for they were clearly improvements upon the stove described in the patent of 1854, and as Littlefield has repeatedly declared, subordinate to the principal claims thereof. (Record 526, 531.) The base burning stove, as now constructed, contains at least three several improvements or combinations, described and claimed in the patent of January, 1854, and its re-issues; one described in the patent of December 9th, 1862, and one described in that of August 18th, 1863, and its re-issues; all of which are so essential that, without them, the stove manufactured by the appellants would have had no actual commercial or saleable value.

The nature and value of these several improvements are readily seen when the construction and operation of the stove in question are understood, and these I shall attempt briefly to present.

The general arrangement of these stoves may be thus stated: A fire-pot in which the coal is ignited and burned, is con-

nected with the lower open end of a magazine reservoir or supplying cylinder, capable of containing such quantity of coal as may be desired. The atmospheric air necessary to produce and continue the combustion of the coal within the fire-pot is admitted thereto at or near its base, and although the flame produced would under ordinary circumstances ascend and ignite the coal above the fire-pot and within the reservoir, this is prevented by the close cover at the top of the reservoir, which prevents all draft in that direction, whilst the flame and products of combustion being drawn upward and laterally from the fire-pot, pass into the surrounding case, and ascending upwards within it and around the reservoir, and over its top, are drawn through the flue and into the chimney. As the coal at the base of the reservoir is consumed, the descent by gravity of that above and within the reservoir, furnishes a constant and steady supply, and thus is the fire fed for many hours without the necessity of an attendant.

The circumstances which led Littlefield to make these improvements, and their utility, are stated by him in various portions of the Record. In 1859 he prepared the second edition of a history of base burning stoves, (page 430) in which he narrates his experiments with a common stove, improvements on which he patented April 15, 1851, which improvements in operation resulted to his surprise in producing a base-burning or horizontal draft stove, without any such intention on his part, (page 449).

This stove contained no reservoir or supplying cylinder, but this he in the fall of 1852 combined with the cylindrical fire-pot, and subsequently patented the same January 24, 1854, (page 450) and thus was verified his statement (page 450) "that he could see in his stove of 1851 the germ from which a more valuable construction was to arise."

Application for this patent of 1854 was first made December 30th, 1852, but was rejected in June, 1853, because he made his claim broadly to the combination of a supplying cylinder with any and every form of fire-pot. This

application Littlefield withdrew, and at the same time renewed it, for amongst other things, the combinations he had actually invented, and the result of this, was the patent of January 24th, 1854.

In the Winter of 1852–3 stoves were constructed in accordance with this patent, having descending flues, which as Littlefield states, being found defective, were abandoned (Record p. 451.) In April, 1853, the agreement in question was made, the application of December 30th, 1852, being then pending. The agreement refers particularly to the patent of 1851, to this application, and expressly conveys to Treadwell & Perry the exclusive right to make stoves, within the States of New York and Connecticut, containing the improvements patented and those described in said application, and all improvements which might be made thereupon.

THIRD. Littlefield well understood, that by virtue of this agreement Treadwell & Perry acquired the exclusive right to manufacture and sell the stoves made in accordance with the Patent of 1854, and with any improvements he might thereafter make upon the stove therein described, and never, until after he had resolved upon violating their rights, did he pretend that they were not entitled to such improvements.

Thus in his aforesaid history, prepared in 1859 and printed in 1860, at page 451 he states, that the stove of 1854, which he called "Littlefield's Improved Coal Burner," and which Treadwell & Perry called the "Lowell Gas Burner," was made by them in 1853, and that they, by arrangement with him, were to have the benefit of all his subsequent improvements, and be protected against infringements. He then proceeds to state objections to the business course pursued by them, and says that until then, *a contemplated improvement was not kept from them*, although he afterwards pursued a different course Record 453.) He also says on

the same page, he proposed to them to adopt the manufacture of a different stove, *from that they were then* (in 1855) *manufacturing under the patent of* 1854, and in November, 1856 we find him giving notice, in view of the advertisements of Treadwell & Perry that they were manufacturing "Littlefield's Improved Coal Burner," patented in 1851 and 1854; *that the firm had no right to manufacture or sell such stoves, except in the States of New York and Connecticut, and that those purchasing with a view to sell in other States must pay him two dollars on each stove for the right so to do.* (Record p. 454.)

In addition to these repeated admissions by Littlefield, of the right of Treadwell & Perry to manufacture stoves in accordance with the arrangement described in the patents of 1851 and 1854, it is proven (Record, p. 202), and not denied, but in substance admitted by him (p. 451), that he, after making said agreement, and in pursuance thereof, made patterns for the stoves to be constructed thereunder, which were in accordance with the descriptions and drawings of the patent of January 24, 1854. The stoves made from these proved to be very defective, owing to a disproportion of the several parts, and this caused great loss to Treadwell & Perry; for although Littlefield travelled through the country in their employ to remedy these defects, he failed to satisfy purchasers (p. 206). Thus, although sales of these stoves in 1853 reached 1,286, 114 were that year returned (p. 203), and several hundred destroyed (p. 206.)

Patterns for remedying the defects referred to, were in 1854, made at the expense of Treadwell & Perry, but under the supervision of Littlefield (pp. 204, 205, 1064), and by the aid of these, stoves were thereafter made which operated satisfactorily; but so injurious were the imperfections in the stoves of 1853 to the reputation of this kind of stove, and so unpopular had it become, that in 1853 but 98 were sold, whilst 163 were during the same year returned (p. 206) In 1855 only 13 were sold, whilst 19 were returned (p. 207.) In 1856, in consequence of changes previously made

in their construction, the prejudices against them commenced wearing away, and that year 26 were sold and but 12 returned. In 1857, 55 were sold and but 2 returned, and in 1858, 194 were sold and none returned (p. 208). At that time the reputation of this stove had become well established in the market, though at great expense of labor and capital to Treadwell & Perry, who were up to that time very heavy losers. In 1858 they wrote to Littlefield asking if he could suggest any improvements to the patterns by them then employed. His reply at page 413, distinctly recognizes their right to make stoves under the patent of 1854, but suggests that *in equity* fifty cents would not be a fair license fee, when there should be added to them, as he proposed, devices described in five other patents.

So popular had the efforts and skill of Treadwell & Perry made these stoves, that in 1859 the sales were 662, whilst only 12 were returned; and in 1860, 738 were sold and but 15 returned

These large and increasing sales excited the cupidity of Littlefield, who resolved to extort a larger license fee from Treadwell & Perry, or engage in the manufacture within the State of New York of the stoves in question; and this led to his calling upon them in January, 1861, and in substance demanding a license fee of three dollars, instead of fifty cents, upon each stove sold—or some arrangement which would yield him $10,000 per annum (p. 209.) They declined to make any change in the agreement of April, 1853, and thereupon, in 1861, Littlefield commenced the manufacture and sale of the "Morning Glory" stoves, identical in all respects with the stoves made by Treadwell & Perry, except that for a time soap stone bars were used in the fire pots instead of iron—an immaterial change—soon, however, abandoned, (p. 210.) The identity of the stoves thus made by him with those constructed by Treadwell & Perry under the patent of 1854, is not only proven by testimony not contradicted, but in October, 1861, was expressly averred by Littlefield himself, as appears at pages 424 to 426 of the Record.

At that time he had resolved, in the face of prior admissions and conduct, upon denying the right of Treadwell & Perry under the agreement of April, 1853, to manufacture stoves according to the patent of 1854; and had determined to insist that such right was confined to the patent of 1851, which, as before stated, described a stove without any supplying cylinder whatever, and one, of course, utterly unlike that for which Littlefield had made patterns in 1853, and which had been ever since manufactured by Treadwell & Perry.

In his amended answer sworn Feb. 4, 1865, he admits that they, in 1853 and 1854, made stoves from patterns got up by him (p. 164) *in precise accordance with the drawings and model of the patent of January* 24, 1854 (p. 167); but denies that the right to manufacture stoves under the patent of 1854 was ever transferred or intended to be to them, (p. 164–167) for the reason that the improvements thereby patented are not improvements upon the invention described in the patent of April 15, 1851 (p. 170). In his original answer, sworn to in 1862, he expressly states *that he desired them to make these stoves under the contract of April*, 1853, and intended to procure patents for the improvements at that time made by him, (p. 49) *and that they undertook the manufacture and sale of the stove of the patent of January* 24, 1854, and continued the manufacture thereof during the fall of 1853, using the name of the Lowell Gas Burner (p. 50).

In his amended answer, sworn to 5th Feb., 1865, he states that the stove patented April 15, 1851, and that described in the application of December 30, 1852, were distinct in their character, and in no way connected as inventions or improvements one upon the other, as alleged in the Bill (p. 161).

The purpose of this averment was to deny that the invention completed in the fall of 1852—a patent for which was applied for in December, and obtained January 24, 1854, passed under the agreement of April, as an improvement

upon the stove described in the patent of 1851. In his first answer however, he expressly swore that after the issuing of the letter patent he made various experiments looking to the improvement of the invention thereby patented, and that in the fall of 1852 he combined the grated fire pot, patented in 1851, with a supplying cylinder, for which he applied for a patent on the 30th December, 1852, as stated in the complainant's bill (p. 47).

FOURTH. We have thus seen that until Littlefield discovered that the high commercial value and popularity of these stoves had been thus attained and secured by the efforts and means, and at the risk of Treadwell & Perry, he yielded to them the unquestioned and exclusive right under the contract of April, 1853, to manufacture and sell stoves within the States of New York and Connecticut, according to the patent of 1854. He then, as we have seen, asserted that they possessed no such right, for the reason that the improvements described in that patent were not applicable to the invention described in the patent of 1851—that the application of December 30th, 1852, did not describe such improvements—and that if it did, the application was denied and the patent of January 24th, 1854, granted for a different invention. These pretences are stamped as false, frivolous and dishonest, not only by the assertions and conduct of Littlefield before referred to, and by other abundant proof wholly uncontradicted, but by the construction of the stove as described in the application of December, 1852, and in the patent of January 24, 1854. His efforts to improve the common stove, which led to the invention patented in 1851, resulted in a base burning stove without a reservoir or supplying cylinder (p. 449.) This he, after many experiments, combined with this stove (see page 47 and 450,) thus producing substantially the one here in controversy.

Efforts were made by Littlefield, after resolving upon his fraudulent scheme, by various surrenders and re-issues of the patent of January 24, 1854, so to present the invention thereby patented, that it should appear not to have been an improvement on the stove described in the patent of 1851; but in this he utterly failed. These successive re-issues finally resulted in four several patents. In one of these, re-issue No. 1813, (p. 129,) he, after particularly stating that his invention relates to improvements in stoves which are supplied with an excess of fuel, and this excess fed to the fire as fast as consumption takes place (p. 130,) claims the combination of a fuel supplying cylinder with a fire-pot when the said supplying cylinder has its cover opening enclosed within a chamber, &c., (p. 134.) In re-issue No. 1814 he again states that his invention relates to an improvement in stoves supplied with an excess of fuel, &c., (p. 136,) and that its object is to make the stove illuminating as well as to serve for heating purposes; and he claims in combination with a fuel supplying cylinder stove, an illuminating case to the chamber, which receives light, and the gaseous products of combustion from the burning fuel, &c., (p. 136.)

In re-issue No. 1815 Littlefield also states that his invention relates to stoves having a supplying cylinder, &c., (p. 138) and he claims in combination with this, &c. a peculiar construction of fire-pot (p. 138.)

Re-issue No. 1823 (p. 139) states the improvement to be upon this kind of stove, and that it consists in so adapting a swinging cover to its top that it may be swung open for the admission of coal, &c., on a horizontal plane (p. 140.)

Patterns for stoves containing all of these improvements were, as Littlefield expressly states, furnished by him to Treadwell & Perry under the agreement of April 5th, 1853, (p. 165, 167) and whilst these improvements were all essential, the combination of the illuminating case was so indispensable that Treadwell testifies (page 412,) and he is not contradicted, that without it, neither the stoves made by Treadwell & Perry nor the "Morning Glory" made by the appel-

lants, would be of any commercial value. And Littlefield, at pages 521–22 of the Record, states the value of this and of other improvements patented in 1854.

It has been heretofore stated, that in 1860, Treadwell & Perry sold 738 of these stoves, and that on the first of January, 1861, Littlefield demanded of them an increase of from 50 cents to $3 as a license fee for each stove they should sell, or that they should make his annual income from sales $10,000. This they declined to do, and although he had as a market and place of manufacture the entire United States, except New York and Connecticut, and the right to make and sell a stove to which Treadwell & Perry had given a high and wide reputation, he resolved to enter into competition with them in the city of Albany where their manufactory was; and in order to drive away their customers and secure them unto himself, he published the threats hereinbefore referred to, some of which may be found at pages 423–4–5–6 of the Record. These were so effective in destroying the trade of Treadwell & Perry, that in 1861 they sold but 377 stoves instead of 738 sold the previous year, whilst in 1862 their sales were reduced to 251, and this result was, as appears from the proof which is not denied, due to the aforesaid threats of Littlefield, and to the extensive introduction of the "Morning Glory" stove, identical says he (p. 426) with the stoves manufactured by Treadwell & Perry.

When in June, 1862, they first heard that the firm of Jagger & Littlefield had been formed to continue the manufacture and sale of the "Morning Glory" stove, a letter was addressed to Jagger by Perry, warning him that such a procedure would be an infringement of the rights of the owner of the contract of April 5, 1853, (p. 210). This letter, which is dated June 2d, will be found at page 94.

That firm did, in defiance of this warning, proceed to manufacture and sell the stoves in question, absorbing the market which had been created by Treadwell & Perry and their successors, and substantially destroying the business by them established.

On the 9th of December, 1862, improvements upon the stoves patented in 1854, were patented by Littlefield, which patent being antedated, is sometimes called in the Record the patent of Nov. 26, 1862, (see Record, p. 526.) One of these improvements—for swelling the lower portion of the case which surrounds the fire-pot or grate and the lower end of the supplying cylinder is of great value—all stoves of this kind being made with it.

Another improvement upon the stove described in the patent of January 24, 1854, was patented to Littlefield, August 18th, 1863, which consisted in suspending the fire-pot instead of resting it upon a plate, (Record, p. 531). This also was a valuable improvement.

At page 537 Littlefield declares the patent of January 24, 1854, to be his base of operations from which all his subsequent improvements proceeded; and at page 531 he states that the "Morning Glory" Stoves containing the improvements patented in December, 1862, and in August, 1863, are subordinate to the patent of 1854 (Record, p. 519, 526, 531.) It is therefore apparent, from the admissions and conduct of Littlefield, from the structure of the stoves in question, and from other proof quite uncontradicted, as well as from the language of the agreement, that the right to these several improvements upon the stove patented in 1854, but completed in the [illegible] passed to Treadwell & Perry. (See also Record, p. 519–539).

fall of 1852

FIFTH. There being no doubt that the appellants manufactured and sold large numbers of stoves made in accordance with these several patents of 1854, (1862 and 1863,) that they were identical with those made by Treadwell & Perry; and it being quite clear that the exclusive right to all these patented improvements for the States of New York and Connecticut passed under the aforesaid contract, we will briefly state why the title to that agreement was at the com-

mencement of this suit in Mary J. Perry, deceased, and is now in John S. Perry as trustee.

The proof is that a written assignment of this agreement, dated March 5, 1862, was by Treadwell & Perry, whose partnership had then expired, executed to George W. Sterling, and recorded May 22d of that year. The consideration to be paid for this was $300; but in consequence of the threats of Littlefield that if Sterling assumed to act under the assignment he would be prosecuted therefor, (Record, p. 169–210,) it was cancelled, (page 210,) no part of the consideration having been paid by Sterling, (page 223); one-half of it was, however, paid by Perry to Treadwell, (p. 330,) which the latter accepted in full for his interest therein.

On the 7th of April, 1862, the agreement in question was transferred to Dickey for the consideration of $50 (pp. 222, 223), with the assent of Treadwell (p. 331), although this was unnecessary; for, by the payment to him by Perry of $150, the right to the agreement on the cancellation of the assignment to Sterling, vested absolutely in Perry.

It is objected, on the part of the appellants, that, as the retransfer from Sterling to Treadwell & Perry bears date June 26th, 1862, it is to be presumed not to have been until then delivered unto them; and that, therefore, when they transferred to Dickey, they had no title, and could convey none to him. It is not pretended that Sterling ever paid anything for the transfer, nor that the same was not cancelled for the cause stated. These facts are undisputed, as is the fact, also, that he formally retransferred to them by instrument dated the 26th of June. That this date was long subsequent to the actual cancellation, which, doubtless, occurred before the assignment to Dickey, is fairly presumable, not only from the fact of the transfer to him of that date, but also from the testimony of Perry, who, at page 272, states, that a prior assignment from Sterling to Treadwell & Perry was actually made, and lost or not received for some weeks afterwards, and that, in consequence

of this, a second re-assignment was made, and dated the day it was written. This, of itself, would be an abundant explanation and answer to this objection, especially as the supposed defect of title is not set up in the answer.

It also appears that this re-assignment to Treadwell & Perry was recorded in the Patent Office June 26th, 1862, the day of the recording of their transfer to Dickey, the recording of which was delayed until the re-transfer from Sterling should be received.

We will, however, suppose that the transfer from Treadwell & Perry was actually made to Dickey, before they had received any transfer or agreement of re-assignment from Sterling, and then will inquire whether, on that assumption, the appellee here has, as against the appellants, title to the agreement in question? Bearing in mind that Dickey on the 2d of July, 1862, transferred it to Mary J. Perry by instrument recorded the 29th of that month, and that before this transfer, Perry, the appellee here, had become, by the payment of $150, the owner in equity of the agreement, could he, after the assignment to Dickey, for the consideration stated, upon receiving the re-transfer from Sterling, claim, as against Dickey, to hold the agreement? Would, he not be estopped from so doing by his assignment, though made before he actually got title to the thing transferred? It is submitted that he would be thus estopped, and that title by him thus acquired, would enure to the benefit of Dickey and his assignee.

But suppose this were not so, there is still another view on the facts proven, which is decisive against the appellants on this point. Their objection is based upon the idea that by the re-transfer from Sterling to Treadwell & Perry, dated June 26th, the legal title became vested in them—the equitable title in Perry—who had paid to his former partner all that he claimed for his interest in the agreement and that should the appellee here recover as trustee for Mrs. Perry, who never had title, another action for the same cause could be successfully maintained in the name of Perry, as the equitable

owner of the agreement for his individual benefit, and thus that the appellants might be compelled to pay twice for the same infringement. This is certainly the only pretence of a defence which can be founded upon this supposed defect of title, and it is easily answered. The respondent Perry, who is sole complainant in the Bill of Supplement and Review by him filed on the death of Mrs. Perry—reasserts her title—avers that she owned the agreement, and that he, as her trustee, is entitled to recover upon it. His recovery in the Court below was based solely upon this theory, and after such recovery no Court of law or equity would permit him, by another suit in his individual behalf, to recover upon the ground that he, and not Mary J. Perry, was owner of the agreement in question. He would be forever estopped from asserting such a claim in a court of justice, and hence a second recovery for the same cause must be deemed impossible.

E. W. Stoughton

John R. Reynolds

for Appellants.

owner of the agreement for his individual benefit, and thus that the appellants might be compelled to pay twice for the same infringement. This is certainly the only pretence of a defence which can be founded upon this supposed defect of title, and it is easily answered. The respondent Perry, who is sole complainant in the Bill of Supplement and Review by him filed on the death of Mrs. Perry—re-asserts her title—avers that she owned the agreement, and that he, as her trustee, is entitled to recover upon it. His recovery in the Court below was based solely upon this theory, and after such recovery no Court of law or equity would permit him, by another suit in his individual behalf, to recover upon the ground that he, and not Mary J. Perry, was owner of the agreement in question. He would be forever estopped from asserting such a claim in a court of justice, and hence a second recovery for the same cause must be deemed impossible.

E. W. Stoughton

John [illegible] Reynolds

for Appellants.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

No. 307.

DECEMBER TERM, 1873.

EXTRACTS FROM THE RECORD,

CONTAINING

FIRST.—The proofs relating to the various assignments of the Contract of April 5th, 1853, on which this action was based. - - - (Page 1 to 12).

SECOND.—The pooofs relating to the performance of this Contract by "Treadwell & Perry." (Page 12 to 20).

THIRD.—The proofs relating to a Contract (not mentioned in either of the bills,) dated Sept. 10th, 1853, between D. G. Littlefield (Appellant,) and "Treadwell & Perry," which related to the same Patent as the former Contract. - (Page 21 to 24).

FOURTH.—The proofs introduced by Complainant, to show the relations of these various Patents to each other. - - - - (Page 25 to 32).

FIFTH.—The proofs introduced by Complainant, as to the infringement by Defendants. - (Page 33 to 40).

SEVENTH.—A summary of all the proofs before the master, that have any bearing upon the question of profits made by the Defendants, by reason of the infringement complained of. (Page 41 to 60).

VAN BENTHUYSEN PRINTING HOUSE, ALBANY.

Extracts from the Record, Containing all the Testimony Relating to the Various Assignments of the Contract set out in the Original Bill.

Page 210, fol. 497. JOHN S. PERRY—*Direct:*

Q. Did Treadwell & Perry sell the contract of April 5, 1853, to George W. Sterling, of Poughkeepsie; and when?

A. They sold it to him about the 5th March, 1862.

Q. Did Mr. Sterling re-sell to Treadwell & Perry, and why?

A. There was some misunderstanding about the terms; and Mr. Littlefield called on Mr. Sterling and made such a statement to him of the trouble he would give him, that Mr. S. wished us to cancel the sale, and we did so.

Q. Was the sale made to Sterling in good faith, and for a valuable consideration?

A. It was so.

Q. What did you then do with the contract?

A. I sold it to Mr. Andrew Dickey.

Q. Was this sale made in good faith, and for a valuable consideration?

A. It was so.

Q. What did Dickey do with the contract?

A. He sold it to Mrs. Mary J. Perry.

Q. Is the contract held by Mrs. Perry upon any trust, secret or otherwise, for the benefit of yourself or any other person?

A. Not to my knowledge.

Page 223, fol. 515. *Cross-examination:*

Q. When were the agreements with Littlefield, and the patents in question assigned to Sterling?

A. There were no patents assigned; it was simply the contract that was assigned; the contract was assigned about the 5th March, 1862.

Q. What was Sterling's business?

A. He was a manufacturer of pig-iron.

Q. What was the consideration of the assignment?

A. Three hundred dollars.

Q. Was it paid?

A. It was not.

Q. Where was the bargain made?

A. At his house at Poughkeepsie.

Q. Who drew the assignment?

A. I think I drew it, but am not positive.

Q. Did you have Littlefield's agreement with you at the time?

A. I did.

Q. Was the assignment written upon the agreements, or a separate piece of paper?

A. I think it was written upon a separate piece of paper and attached to it.

Q. Were both agreements assigned?

A. I don't remember whether they were spoken of as one or two; I am speaking of the agreement of April 5, 1853.

Q. Did you take back any writing from him as evidence of his promise to pay the $300?

A. I did not.

Q. Did you leave the agreements and assignments with him?

A. I did not; I sent them a few days after.

Q. Did you make any other or further agreement with him than the one you have mentioned?

A. I don't remember any other.

Q. Would you be likely to remember it if you made any other?

A. I think I should.

Q. How long did you retain these agreements?

A. A few weeks.

Q. Were you present when the sale was made to Dickey?

A. I was.

Q. When was it you transferred it to Dickey?

A. According to the bill of complaint it was on the 7th day of April, 1862.

Q. What did Dickey pay for it?

A. Fifty dollars.

Q. At the time of the assignment?

A. I can't say it was that day; it was paid some time after that, I think.

Q. Did you consider that sum the fair value of your interest under the agreement?

A. I can't say what I consider the fair value of it; I did not know what the value was.

Q. Did you at that time consider your interest in that agreement valuable?

A. I considered it valuable to any one who had the means and disposition to contest it.

Q. Didn't you understand at that time that that interest was of large intrinsic value to any one engaged in the stove manufacture, provided it gave the right to the use of the patents, as claimed in the complaint in this case?

A. If the right was undisputed, I should have considered it so.

Q. When did Dickey transfer his interest to Mrs. Perry?

A. On the 2d day of July, 1862.

Q. What was paid for the transfer?

A. Fifty dollars.

Q. Who negotiated the purchase?

A. I negotiated it and paid the money.

Q. Who drew the assignment?

A. I think I drew it.

Q. Who took the papers at that time, and where have they been kept since?

A. I took the papers, and they have been kept in the safe with other papers belonging to Mrs. Perry.

Q. Where were the papers kept while the title vested in Dickey?

A. They were in his possession, but I don't know where they were kept.

Page, 257, fol. 563.

Q. Was this contract of Sept. 10, 1853, included in the assignment from Treadwell & Perry to Geo. W. Sterling, mentioned in the bill of complaint?

A. It was.

Q. Was the same re-assigned by Sterling to Treadwell & Perry.

A. It was.

Q. Did Treadwell & Perry include this contract in their assignment to Dickey?

A. It was included.

Q. Did Dickey, in his assignment to Mrs. Perry, include this contract of Sept. 10th, 1853?

A. He did.

Q. Was it not stipulated in said contract of Sept. 10th, 1853, that Treadwell & Perry were not to dispose of the right or privileges thereby conveyed, except to their successors in business, without the written consent of Littlefield?

A. It was.

Q. Did you ever ask for, or obtain, such written consent from Littlefield?

A. I never did.

Page 271, fol. 582.

Q. Who was then the owner of said contract, as per assignment of Treadwell & Perry?

A. If the letter I wrote was dated the second of June, 1862, the owner of the contract at that time was Andrew Dickey.

Q. When was the sale made to Dickey?

A. I see by the bill of complaint it was made on the 7th day of April, 1862.

Q. Had you not, on the 25th day of the previous month, made an assignment of the same contract to George W. Sterling?

A. According to the bill of complaint we had.

Page 271, fol. 583.

Q. You say that Littlefield called upon Mr. Sterling and made such a statement, that Sterling wished you to cancel the sale to him. Do you know when Littlefield called upon Mr. Sterling, or when he first learned that Treadwell & Perry had made such an assignment?

A. I don't know anything about Mr. Littlefield's visit to Mr. Sterling, except what Mr. Sterling stated to me.

Q. What did Mr. Sterling state to you with reference to Littlefield's call upon him?

A. He stated, in substance, that Littlefield called on him and made such bluster and threats about the trouble he would give him, that he didn't want anything to do with it, even though he had a prospect of making enough out of it to four times cover the losses that he had sustained by the firm of W. & J. Treadwell, Perry & Norton.

Page 272, fol. 584.

Q. Was it not the fact that both Sterling and Dickey, at the time you wrote said letter to Jagger, in June, 1862, held assignments from Treadwell & Perry of said contract of April 5th, 1853?

A. According to my recollection, the first re-assignment made by Sterling to Treadwell & Perry, was lost in the mail or not received for some weeks afterwards, and the second re-assignment was made to take its place, and dated at the time it was written. The discrepancy in the dates was caused by one of the assignments being lost or miscarried. I am not quite certain which.

Q. Were there two re-assignments executed by Sterling between May 1st and July 1st, 1862?

A. My last answer covers all I have to say on that subject.

Q. Will you swear that Geo. W. Sterling, of Poughkeepsie, N. Y., ever executed a first, and then a second re-assignment to Treadwell & Perry, of the contract of April 5th, 1853?

A. I am not positive whether the delay in the dates of the assignment of the 26th June, 1862, was caused by a former assignment having been lost, or whether it was caused by the assignment of Treadwell & Perry to Sterling, of 25th March, 1862, having been lost or delayed in the mail. It was caused by one or the other.

Q. Will you swear positively, as you have already stated in your direct testimony, that the re-assignment of Sterling to Treadwell & Perry, was subsequent to Littlefield's call upon him with reference to that matter, to which you have already testified?

A. I can't swear positively to what I didn't see or hear.

Q. Will you swear positively that Sterling executed said re-assignment subsequent to Sterling's informing you of Littlefield's call upon him as before referred to?

A. That is my recollection.

Q. Will you swear that he executed any re-assignment previous to June 2, 1862?

A. I will swear nothing on that subject different from what I have.

Q. Will you swear he executed any re-assignment previous to May 15, 1862?

A. I will swear nothing on that subject different from what I have. I have stated all I know or remember about it.

Q. Will you swear he executed any re-assignment previous to May 1, 1862?

A. I decline to answer any more repetition of that question.

Page 306, fol. 633. *Re-direct:*

Q. Why did you sell the contract to Dickey?

A. At that time I contemplated leaving the business, and moving West. Mr. Dickey contemplated embarking in the business; he understood and appreciated these stoves; he had been a clerk for our late firms for several years, and I wished to see him prosper.

Q. At the time of the sale was there any understanding, or did you contemplate buying the contract for Mrs. Perry?

A. There was no understanding to that effect, and no such thought or intention had entered my mind.

Q. After you had sold these contracts to Sterling, for three hundred dollars, what did you report to Wm. B. Treadwell?

A. I reported the sale, and that I expected to receive the money in a few days. I paid him one hundred and fifty dollars in cash as his share of the proceeds.

Q. Was this a *bona fide* payment? and has Mr. Treadwell had any interest in these contracts since that time?

A. It was, and he has not.

Page 314, fol. 645. WM. B. TREADWELL—*Direct:*

Q. Did Treadwell & Perry sell the contract of April 5th, 1853, to George W. Sterling of Poughkeepsie?

A. They did.

Page 317, fol. 649. *Cross-examination:*

Q. Were you present at the sale, by Treadwell & Perry to Sterling, of the contract of 1853?

A. I was not. I signed the transfer with Mr. Perry, but was not present at the delivery, or the making of the contract.

Page 330, fol. 667.

Q. Will you testify that the sale to Sterling, of the contract of April 5, 1853, was a *bona fide* purchase on his part?

A. I didn't have anything to do with Mr. Sterling in the negotiation. When I signed the transfer I supposed it a *bona fide* transaction. I was told so.

Q. Did you understand that said transfer also included the contract of Sept. 10, 1853?

A. The thing never entered my mind at all.

Q. Were not W. & J. Treadwell, Perry & Norton at that time largely indebted to Sterling?

A. They were $1,000 or so.

Q. Was Littlefield, to your knowledge, consulted or notified that said transfer was to be made to Sterling?

A. Not to my knowledge.

Q. Was Sterling engaged in the manufacture of stoves?

A. I think not.

Q. Did he at that time to your knowledge contemplate engaging in such business?

A. I do not know that he did.

Q. Did you, at the time the transfer was made to Sterling, take an equal interest with Perry in negotiating such sale?

A. I expected to receive half what Mr. Perry received for it; I did receive half.

Q. Did Sterling ever pay anything, so that you ever in reality received anything on such sale?

A. I couldn't swear that Mr. Sterling ever paid anything, as I did not transact the business with him. I received from Mr.

Perry half what I understood from him he received for the thing transferred.

Q. Did not Treadwell & Perry, within a very few days after said transfer to Sterling, make a transfer of the same agreement to Andrew Dickey?

A. Andrew Dickey became the owner, so I understood; but really I cannot tell whether Mr. Sterling assigned to him, or whether we transferred to Mr. Dickey direct. I do not recollect distinctly; it was some time ago. I understood there was a misunderstanding about it, and how it was done I can't say exactly.

Q. Was it by your consent that those agreements were transferred to Dickey?

A. I think it was.

Q. Will you swear that you consented to part with your interest in said agreement upon a transfer to Dickey, for any portion of the same mentioned in the transfer to him as the consideration?

A. The business was done by Mr. Perry. I received half what he received for it. I relied upon him, being a former partner of mine, and in whom I had confidence.

Q. In these various transfers did you understand that Littlefield was notified, and had a knowledge of what was being done with such agreements?

A. I did not.

Page 335, fol. 674. *Re-direct:*

Q. After the sale of the contracts of April 5th and Sept. 10th, 1853, to Sterling, what did you understand he was to pay for them?

A. Three hundred dollars.

Q. Did not John S. Perry pay to you the sum of one hundred and fifty dollars in cash for your interest in said sale?

A. He did.

Q. Was not this a *bona fide* payment, and did you ever return any portion of that amount?

A. It was; and I did not.

Q. Have you had any direct or indirect interest in these contracts since that time?

A. I have not.

Page 347, fol. 690–691. ANDREW DICKEY—*Direct:*

Q. Did you purchase the contract of April 5, 1853, from Treadwell & Perry, and at what time; and how much and in what manner did you pay for it?

A. The assignment is dated 7th of April, 1862. The amount of money paid for it was fifty dollars. I do not remember the exact time.

Q. Was the purchase made in good faith, and was it a *bona fide* transaction?

A. It was.

Q. What did you do with it?

A. I sold it to Mrs. Mary J. Perry.

Q. Was this sale and transfer made in good faith, and was it a *bona fide* transaction?

A. It was.

Q. Have you any evidence, or any reason to believe that this contract is held by Mrs. Perry under some secret trust for the use and benefit of John S. Perry, or any other person?

A. I have not.

Q. Was there, in this purchase by you, any agreement, express or implied, or any intimation directly or indirectly, that you should sell the contract to Mrs. Perry, or any other person?

A. There was not.

Page 363, fol. 714. *Cross-examination:*

Q. You have testified that you purchased the agreement of April 5, 1853, on the 7th April, 1862; did you also at the same time purchase another agreement between the same parties, and receive by the same assignment from Treadwell & Perry, the two agreements, one bearing date September 10, 1853, and the other April 5, 1853?

A. I think not; I can't say without examining; I don't understand what is referred to.

Q. Did you ever understand there was such an agreement bearing date September 10, 1853, between Treadwell & Perry and Littlefield?

A. I can't tell anything about it without looking it up.

Q. Was you not aware when you received the assignment of the agreement of April 5, 1853, that Littlefield had given public

notice for several months previous, that said agreement was of no validity, and did not give any party at that time a right to manufacture any of his improved stoves?

A. I was aware that these were the grounds he took, but I did not think he would persist in it; I knew that he had given such notice.

Q. Did you ever inform Littlefield you intended to purchase said agreements, or did you so inform him when you had purchased them?

A. I don't know that I did either before or after; I don't remember anything about it.

Q. At the time you purchased them, April 7, 1862, did you not see Littlefield quite often, and could you not have informed him of the fact, had you so desired?

A. I saw him quite often, and could have informed him; I don't know but I did; I can't say.

Q. Have you any knowledge that Littlefield knew of your owning said agreement previous to the date when the copy of the bill of complaint in this cause was served upon him?

A. I have not.

Page 365, fol. 716.

Q. Was you the subscribing witness to the assignment of Treadwell & Perry to Sterling, on the 25th of March, 1862, of the agreements of Littlefield with Treadwell & Perry, of the 10th of September, 1853, and April 5th, 1853?

A. I have no recollection whether I was or not.

Q. Was Sterling present at the time of the execution of the assignment?

A. I can't say.

Q. Do you know that Sterling paid the consideration mentioned in the agreement?

A. I do not know.

Q. Are you acquainted with George W. Sterling, of Poughkeepsie?

A. I am.

Q. Were you aware when you received said assignment on the 7th of April, 1862, from Treadwell & Perry, that said Sterling held an assignment of said agreement from Treadwell & Perry?

A. I was not.

Q. Were you present when said assignment to Sterling was executed, and did you see Treadwell & Perry sign their names?

A. I can't say whether I was or not present, or whether I saw them sign their names or not. I have no recollection.

Q. Did you know, at the time of the assignment to you, of any disagreement or misunderstanding between Littlefield and Treadwell & Perry?

A. I did.

Q. What did it consist of?

A. I knew that Mr. Littlefield claimed that they had no right to make the stoves, and on their side they claimed that Corning & Co. had no right to make the Morning Glory.

Q. What stove do you refer to as the Morning Glory as being made by Corning & Co.?

A. The one with the soap stone base (patent of 1861).

Q. Was it understood that you were to manufacture the stoves after the assignment to you?

A. There was no understanding about it.

Q. Were you to assign said agreement to some one else afterwards?

A. I was not.

Q. Did you have any facilities for manufacturing said stoves yourself?

A. I had.

Q. Where?

A. I did not understand the question. I had not myself.

Q. Who suggested the idea to you of assigning said agreements to the plaintiff?

A. No one.

Q. Who drew up the assignment from you to the plaintiff?

A. I am not sure who did.

Q. Did not John S. Perry?

A. I can't say. He might have done so.

Q. Did John S. Perry pay you the consideration mentioned in the assignment?

A. I think he did, but it might have been Mrs. Perry. I could not say which.

Q. Who negotiated the sale from you to her?

A. I proposed to sell it to her.

Q. Where was it?

A. At our office.

Q. Who was present?

A. I haven't any recollection who was present. I think now, John S. Perry. It was to him I made the proposition.

Q. The plaintiff was not present then, was she?

A. I think not.

Q. Did you ever have any talk with her in regard to the assignment before the assignment was made?

A. I have no recollection. I think the business was done with Mr. Perry.

Q. What was your occupation at the time you received said assignment?

A. Salesman.

Q. For whom?

A. John S. Perry, agent.

Q. Were you present when said assignment to you was written?

A. I have no recollection whether I was or not.

Q. Where were you and Perry at the time of the assignment to you?

A. At the office, 478 Broadway.

Q. Who was Perry acting as agent for at that time?

A. He was acting as agent for Palmer, Williams, and Goewey, trustees for certain creditors.

Page 370, fol. 723. *Re-direct:*

Q. About the time you purchased these contracts from Treadwell & Perry, was not John S. Perry contemplating a withdrawal from the stove business and removal into the western country?

A. He was.

Q. Were not you about that time entertaining proposals from one or more persons to embark in the stove business?

A. I was.

Page 392, fol. 755.

Q. Will you look upon the paper (the assignment to Sterling), marked by the commissioner, plaintiffs' exhibit T, and state whether your name is signed thereto as a witness; and did you see W. B. Treadwell and John S. Perry execute the same?

A. My name is signed as a witness; I saw them execute it.

13

Extracts from the Proofs Relating to the Performance of the Agreement by Treadwell & Perry.

JOHN S. PERRY—*Direct:* (Page 202–3, fol. 486.)

Q. Did you keep one of these new stoves in operation in your warerooms, and for what purpose?

A. We kept one in constant operation for several months, for the purpose of testing it, and for exhibition to the trade.

Q. What name did you give this stove in 1853?

A. The Lowell Gas Burner.

Q. What number did you sell during the year 1853? Were there any returned to you, and if so, what number?

A. We sold 1286; there were returned to us 114.

(Page 205, fol. 490–1.)

Q. What number of stoves called the "Lowell Gas Burner," "Perpetine Coal Burner" and "Brilliant" did you sell during 1854, and what number was there returned to you?

A. Sold in 1854, 98; returned in 1854, 163.

(Page 206–7, fol. 492.)

Q. Was Littlefield employed by W. & J. Treadwell, Perry & Norton in 1854 and 1855, and did he understand the basis on which that firm manufactured these stoves under said contract with Treadwell & Perry?

A. He was employed by that firm in 1854 and 1855, and perfectly understood that they made and sold the stoves by consent of Treadwell & Perry, and that the premiums were to be credited to his indebtedness.

Q. Did he ever object to this arrangement?

A. He never did, but on the contrary by his acts approved it.

Q. State what number of these stoves that you sold in 1855, and the number returned?

A. Sold in 1855, 13; returned in 1855, 49.

(Page 208, fol. 493–4.)

Q. What did you do under the contract of April 5, 1853, in the year 1856?

A. We continued to exhibit the stoves and to urge the sale of them in the usual manner.

Q. What number did you sell in that year, and what number was there returned to you?

A. Sold in 1856, 26; returned in 1856, 12.

Q. What number did you sell in 1857, and what number was there returned to you?

A. Sold in 1857, 55; returned in 1855, 2.

Q. What number of these stoves did you sell in 1858, and what number was there returned to you?

A. Sold in 1858, 194: returned in 1858, none.

(Page 209, fol. 495.)

Q. Did you continue the manufacture and sale of these stoves in 1859, and if so, state the number sold and the number returned?

A. We continued the manufacture and sale. The number sold in 1859, 662; returned, 12.

Q. What transpired in 1860?

A. In May, 1860, the effects of the firm of W. & J. Treadwell, Perry & Norton were placed in the hands of James C. Cook, Esq., as receiver, for settlement. The business of manufacturing and selling stoves was carried on by him until Sept. 1, 1860, when the patterns and stock was sold to John G. White, Esq., who continued the business * * * until March 29, 1862.

Q. Did Mr. White continue the manufacture and sale of these stoves for you, under the contract of April 5, 1853?

A. He did so.

Q. What number of the stoves did you sell in 1860, and what number were returned?

A. Sold in 1860, 738; returned in 1860, 15.

Q. What number of the stoves did you sell in 1861, and what number were there returned?

A. Sold in 1861, 377; returned in 1861, 31.

(Page 210, fol. 496.)

Q. State the number of these stoves sold in 1862, and the number returned?

A. Sold 251, returned 12.

Cross-examination: (Page 221, fol. 512.)

Q. Were there not patterns made for four sizes of this stove and furnished to you?

A. There were.

Q. Were the patterns for the fourth size destroyed?

A. I think they were.

Q. By whom, and when?

A. I don't know when or by whom, nor by whose direction.

Q. Did your firm issue circulars, or pamphlets, containing a catalogue of stoves manufactured and kept for sale by you?

A. They did.

Q. Were the various stoves mentioned by you in your direct testimony, contained in each yearly circular or pamphlet?

A. I think they were not in 1856, 1857 and 1858.

(Page 221, fol. 513.)

Q. Did they manufacture the Brilliant after 1854?

A. I think we manufactured them in 1855.

Q. Did you after that?

A. I think not.

Q. What became of the patterns?

A. They were destroyed.

Q. When, and by whom?

A. I can't tell when, or by whom, or by whose direction.

(Page 258, fol. 564.)

Q. Was it not stipulated in the contract of Sept. 10th, 1853, that when it became necessary for Littlefield to travel for the purpose of introducing said furnaces into use, that Treadwell & Perry were to pay his expenses, and a reasonable compensation for his time?

A. It was.

Q. Did he so travel in 1854 and 1855?

A. I think he traveled more or less in both years; but not entirely to sell furnaces.

(Page 259–60, fol. 566.)

Q. You say that in 1854 and 1855, there was a basis on which W. & J. Treadwell, Perry & Norton, manufactured said stoves with Treadwell & Perry. Will you explain what that basis was?

A. They were to manufacture and sell all the stoves they could; pay the premium, 50 cents a piece, to Treadwell & Perry, which was to be credited on Littlefield's indebtedness.

Q. Was Littlefield consulted with reference to such an arrangement?

A. I can't say whether he was or not.

Q. Can you swear that Littlefield ever had the least hint or intimation that Treadwell & Perry had made any arrangement with W. & J. Treadwell, Perry & Norton, by which that firm were to manufacture these stoves in connection with Treadwell & Perry?

A. I will swear that Littlefield was in the employ of W. & J. Treadwell, Perry & Norton; that he understood perfectly the arrangement; that I never heard of his objecting to it, and I think by his acts he approved it.

Q. Will you swear that Littlefield ever did know there was any such arrangement?

A. I will swear that I had reason to suppose he knew it.

Q. Was there any such firm as Treadwell & Perry doing business, except to close up their old matters, subsequent to June 20th, 1854?

A. I don't know that there was.

(Page 365, fol. 573.)

Q. Did W. & J. Treadwell, Perry & Norton continue to own the patterns for the said Littlefield Coal Burner, in 1859 ?

A. They did.

Q. Did they own them at the time of their failure in May, 1860 ?

A. They did.

Q. Did they go into the hands of James C. Cook, receiver, on or about the 16th May, 1860 ?

A. They did.

(Page 279, fol. 595.)

Q. Are you prepared to state whether or not the said Mary J. Perry had, on the 26th day of August, 1862, caused any of these stoves, known as the Littlefield Coal Burner, to be made ?

A. I am not.

Q. Had she, to your knowledge, made any ?

A. I can't answer that question without investigating the books.

Q. Could she have made any without your knowledge ?

A. I probably knew when she made them, if she made them. She made a quantity of these stoves during that year, but I cannot say whether it was before or after that date.

Q. Where did she make them ?

A. I was mistaken in my mind in the year. She made no stoves until after the 29th day of November, 1862.

WM. B. TREADWELL—*Cross-examination :* (Page 316, fol. 647.)

Q. Do you know whether or not your firm advertised these stoves in their circulars to customers during the years 1856-'7-'8 ?

A. I do not know positively ; I think they did.

Q. They issued circulars to their customers of all stoves they kept on hand for sale. did they not?

A. That was their custom.

(Page 316,-fol. 648.)

Q. Will you swear that your house manufactured any of these stoves in 1855?

A. I will not.

Q. Will you in 1856?

A. I will not, positively.

Q. Will you in 1857?

A. Not positively.

(Page 317, fol. 648.)

Q. What is the object of sending circulars of the stoves you keep for sale to your customers?

A. That they should be informed of what we had for sale.

Q. Is that a custom universal with the trade?

A. I think it is pretty general.

Q. Where a stove has been in a catalogue for several years, and is then droped from it, what is the customer to infer from such fact; that the stove is kept for sale or not?

A. He could come to the conclusion that it was not kept for sale.

(Page 343, fol. 685.)

Q. Can you testify that, during the fall of 1853, or at the commencement of the sales of the Lowell Gas Burner, a book was appropriated in the office for the special purpose of keeping a record of said sales?

A. I cannot.

ANDREW DICKEY—*Cross-examination:* (Page 357–8, fol. 705–6.)

Q. Was you aware during the fall and winter of 1861 and '62, that John G. White by his agents was representing to the trade, by writing numerous letters, that he was the owner by purchase and assignment of the contract of April 5, 1853?

A. I don't remember that they wrote in these words. They might have done so.

Q. Was you not aware at that time, and did you not yourself so represent, while in the employment of said White, that he, the said White, was the owner of said right to manufacture the stove called the Littlefield Coal Burner?

A. I might have so represented. I think I did. I thought so at the time.

Q. For how long a time was it, did you suppose, that the said White was the owner of said contract of April 5, 1853?

A. I don't remember the date when I was told to the contrary.

A. Did you suppose he was the owner of said right in 1860?

A. I did.

Q. What led you to suppose that he was the owner in 1860?

A. I can't say what, unless it was the conversations I heard about it.

Q. Are you satisfied that you had that impression from what you heard said in the office of John G. White in the conducting of said business during the fall of 1860?

A. I can't say positively, but I think it was.

Q. Did you continue to suppose from those conversations, and the letter marked exhibit 1, that said White was the owner up to the time when said White transferred the property * * * * to the various creditors of the concern?

A. I don't remember the time I was told he was not; but I did suppose so at the time I delivered the letter marked exhibit 1.

Q. Can you testify that you were informed by any person that said White was not the owner previous to the time of the business passing out of his hands?

A. I think it was a short time before, but won't swear positively.

Q. Who informed you that said White was not the owner?

A. I think it was John S. Perry.

(Page 361, fol. 710.)

Q. Did you have conversations with Littlefield, having reference to said stoves, in 1861 and subsequently?

A. I think I have.

Q. Was you not informed by him in 1861, that John G. White nor any other party had a right to manufacture the stoves in question?

A. I think I was.

Q. Did he not inform you at various times in 1861, that whatever rights Treadwell & Perry might have had, had long previous to that time ceased to be of any validity?

A. I think he so informed me; but whether it was in 1861 or not, I can't say; it was some time along there.

RICHARD M. RAND, a clerk for W. & J. Treadwell, Perry & Norton.

Cross-examination: (Page 376, fol. 731.)

Q. From your knowledge of the business of manufacturing and selling stoves as done at Albany, will you state what you understand to be the object of the trade in issuing annually a catalogue of the stoves they are making?

A. The object is to show their customers what stoves they are making, so that they may order without seeing the stove.

(Page 380, fol. 737.)

Q. Will you on your oath state, what you would yourself expect a dealer to infer upon receiving their catalogue in 1856, 1857, and 1858, if he found that the Littlefield stoves were not included among the assortment of stoves, to which his attention was thereby called?

A. I should expect he would infer it was left out.

Q. Would you not expect him to infer that their manufacture was discontinued?

A. I presume I should.

Proofs Relating to an Agreement of September 10, 1853, between D. G. Littlefield, and "Treadwell & Perry, their Executors, Administrators, and Successors in Business."

This agreement was attached to the proofs (page 1074, fol. 3411) taken before the master, after the same were closed. (See page 1073, fol. 3406.)

JOHN S. PERRY—*Direct:* (Page, 206, fol. 491.)

Q. What further acts did you do that showed your confidence in this principle of burning coal?

A. We entered into a contract with Littlefield, September 10, 1853, to make and sell a hot-air furnace based upon the same principle as the stoves. In 1854 we expended not less than $2,000 for patterns and flasks for them.

Q. Had this contract of September 10, 1853, for the furnaces, any relation to the contract of April 5, 1853, for the stoves?

A. None whatever.

Cross-examination: (Page 224, fol. 517.)

Q. Was the contract of September 10, 1853, between you and Littlefield founded upon the patent of 1851, and the application of 1852?

A. I can't say positively that it was, though I think it was.

Q. You manufactured furnaces under the contract of September 10th?

A. We did.

Q. Did they operate upon the same principle with the stoves you manufactured in 1854?

A. I think they did.

Q. Did you regard these stoves and furnaces as covered by the same patent?

A. I did.

Re-direct: (Page 227, fol. 521.)

Q. Had the contract of September, 1853, between your firm and Littlefield, for the manufacture of furnaces, any relation to or connection with the contract of April 5, 1853, for the manufacture and sale of stoves?

A. None whatever.

Re-cross: (Page 257, fol. 562.)

Q. What commission or premium was Littlefield to receive upon the sale of said furnaces?

A. Ten per cent. of the amount of sales.

Q. About what amount of sales of said furnaces in the year 1854?

A. I can't tell without reference to the books.

Q. Will you swear that it was less than $8,000?

A. I will swear to no amount without reference to the books.

Q. Did you ever pay Littlefield any premiums upon the sales of said furnaces?

A. His account was credited what was due him.

(Page 257, fol. 563.)

Q. Did you, on the 14th of April, 1855, write a letter over the signature of W. & J. Treadwell, Perry & Norton, purporting to advise other parties to engage with Littlefield in the manufacture of said furnaces?

A. I wrote a letter of that date, but I didn't advise anybody to engage in the manufacture of any furnaces.

Q. Did you not in said letter say that any concern that had time to attend to it, you thought, would be repaid by making an arrangement with Mr. Littlefield?

A. I did.

Q. Was not the contract of Sept. 10, 1853, for the whole United States, excepting the city of Lowell, Mass.?

A. It was.

Q. Did not said letter of April 14, 1855, speak of said furnace

as being made under the patent belonging to Mr. D. G. Littlefield?

A. It did.

Q. Was this contract of Sept. 10, 1853, included in the assignment from Treadwell & Perry to George W. Sterling, mentioned in the bill of complaint?

A. It was.

(Page 258, fol. 564.)

Q. Was it not stipulated in said contract, * * * that Treadwell & Perry were not to dispose of the right * * * thereby conveyed, except to their successors in business, without the written consent of Littlefield?

A. It was.

Q. Did you ever ask for, or obtain, such written consent from Littlefield?

A. I never did.

(Page. 223, fol. 515.)

Q. What is Sterling's business?

A. He is a manufacturer of pig-iron.

(Page 260, fol. 567.)

Q. Was there any such firm as Treadwell & Perry doing business, except to close up their old matters, subsequent to June 20, 1854?

A. I don't know that there was.

(Page 299, fol. 622.)

Q. Can you testify when the first premiums, if any, were credited to Littlefield on furnaces?

A. They were probably credited on the 31st of December of the year in which they were first made.

Q. Were they not made and sold in 1854?

A. I think they were sold during that year, more or less.

Q. Was not that the year they were introduced, and was not that the year when nearly all were sold that were ever sold?

A. My impression is that most of the sales were made in 1854.

Q. Did you regard these stoves and furnaces as covered by the same patent?

A. I did.

Re-direct: (Page 227, fol. 521.)

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Q. Was not that the year they were introduced, and was not that the year when nearly all were sold that were ever sold?

A. My impression is that most of the sales were made in 1854.

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(Page 302, fol. 626–7.)

Q. Will you testify that there does not stand to the credit of Littlefield on the books of Treadwell, Perry & Co., of W. & J. Treadwell, Perry & Norton, now in the hands or J. C. Cook, receiver, a credit under date December 31st, 1854, that reads substantially as follows: "Premiums on heaters (furnaces) sold and paid for, $262.70; do. on heaters sold and not paid for, $503.42; 94 gas burners, $47; 5 brilliants, $2.50"? (the whole amounting to $815.62.)

A. As I before stated, Littlefield was credited on the books of the firm, at the end of the year, with what was supposed to be due him. When the furnaces were returned, or not paid for by reason of their unsatisfactory operation, and when the stoves were returned, counter entries were made to correspond with the same.

The testimony of RAND, who was a clerk for W. & J. Treadwell, Perry & Norton, and also for said receiver, shows that this credit to Littlefield for premiums on furnaces, etc., on the books of W. & J. Treadwell, Perry & Norton, then in the hands of said receiver, was $804.43. (Page 382, fol. 740.)

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Extracts from the Proof Containing Complainant's Testimony, as to the Relation of the Patents to each other.

(Pages 200, 201.) JOHN S. PERRY—*Direct:*

There is mentioned in his testimony: *First*, the "stove as patented April 15, 1851." *Second*, the "stove as applied for December 30, 1852." *Third*, the "stove as patented January 24, 1854." *Fourth*, "the 'Lowell Gas-Burner,' as made by Treadwell & Perry in 1853, under the patent of January 24, 1854." *Fifth*, "the stove as modified * * * and named 'Perpetim Coal Burner,' instead of 'Lowell Gas-Burner.'" *Sixth*, "the 'Brilliant,' as made by Treadwell & Perry and their successors." *Seventh*, "the 'Railway Coal Burner,' as patented March 4, 1856, and made by Erastus Corning & Co." *Eighth*, "the 'Littlefield Coal Burner,' as made by W. & J. Treadwell, Perry & Norton, Treadwell's & Perry, agents, and John S. Perry, agent, 1858, 1859, 1860, 1861, 1862, 1863, under patent of January 24, 1854, from the patterns of the 'Lowell Gas Burner,' improved." *Ninth*, "the 'Morning Glory,' as made by Jagger & Littlefield during 1862, and a part of 1863." *Tenth*, "mode of confining the soap-stone bars, patented June 25, 1861." *Eleventh*, "the 'Morning Glory,' as made by Jagger & Littlefield during a part of the year 1863." *Twelfth*, "the 'Morning Glory,' as made by Jagger & Littlefield during the year 1863." *Thirteenth*, "the stove as re-issued 'March 3, 1863, from the surrendered patent of January 24, 1854;'" and without testifying that any of these stoves are in any way related to each other, as improvements or inventions applicable to each other. He testifies (page 201, fol. 484) that Wm. B. Treadwell and John S. Perry entered into a contract with Littlefield for the exclusive right to sell these

stoves so patented, and so applied for, and for all further improvements on the same, for the States of New York and Connecticut; that such a contract was made between the parties, April 5, 1853."

(Page 204, fol. 488.)

Q. Was the stove as manufactured by your firm based upon the stove of 1851?

A. It was so. The stove of 1851 was, according to the published statements of Littlefield, the "germ from which the future inventions arose."

(Page 315.) Wm. B. Treadwell—*Direct:*

Q. Are you familiar with the construction of the stove made and patented by Littlefield, April 15, 1851?

A. I am.

Q. What relation has that stove to those called the "Lowell Gas Burner," "Perpetim Coal Burner," "Brilliant," and "Littlefield Coal Burner"?

A. It has the same grated fire-pot, the flue between that and the outer shell, and the mica lights.

Q. Are you familiar with the stove made by Littlefield, and for which he applied for a patent December 30, 1852?

A. I am.

Q. What relation has that stove to the Lowell Gas Burner, Perpetim Coal Burner, Brilliant, and Littlefield Coal Burner?

A. It is the same thing, with the revertible flue omitted.

Q. Are you familiar with the construction of the stove called the "Morning Glory," made by the defendants, with soapstone fire-bars, as patented by Littlefield, June 25, 1861?

A. I am.

Q. What relation has that to those above named?

A. I think it is constructed on the same principle.

Q. Are you familiar with the construction of the said Morning Glory, as made by the defendants, with a series of obliquely-formed mouths or openings in the fire-pot?

A. I am.

Q. What relation has that stove to the Lowell Gas Burner, and others, as before named?

A. I think the principle is the same.

Q. Are you familiar with the construction of the third pattern of the said Morning Glory, as made by the defendants during 1863, with a suspended reservoir?

A. I am.

Q. What relation has that stove to the "Lowell Gas Burner" and others, as before named?

A. The third pattern is provided with the same flue surrounding the reservoir and passing over the top of the cover of same; also the mica lights. The reservoir is suspended from the upper part of the stove; the fire-pot is bell-shaped and solid. The fire passes between the top of the fire-pot and bottom of reservoir into the chamber.

(Page 344.) ANDREW DICKEY—*Direct:*

Q. Have you seen and examined a stove that was constructed according to the specifications and drawings attached to a patent granted to Littlefield April 15, 1851?

A. I have.

Q. Have you seen and examined a stove that was constructed in accordance with specifications and drawings that were filed with an application for a patent by Littlefield, in the Patent Office at Washington, on the 30th of December, 1852?

A. I have.

Q. Have you seen and examined the stove called the "Lowell

Gas Burner," the "Perpetine Coal Burner," the "Brilliant," and the "Littlefield Coal Burner," which were respectively constructed under the patent granted to Littlefield, Jan. 24, 1854?

A. I have.

Q. Describe the relations of the six stoves named to each other?

A. The stove of 1851 contained the grated fire-pot, the chamber between that and the outside shell, and the mica lights. In the stove of 1852, the covered reservoir and cylindrical register were added to the features before named. The "Brilliant" was constructed in principle like the stove of 1852; the "Lowell Gas Burner" was constructed on the same principle as the stove of 1852 and the "Brilliant," except that the revertible flues and the cylindrical register were omitted; the "Perpetim" and the "Littlefield Coal Burner" were constructed strictly in accordance with the principle contained in the stove of 1852.

Q. Are you familiar with the principle and construction of the stove made by the defendants, called "Morning Glory"?

A. I am.

Q. State the difference, if any, between this stove and the five last before mentioned?

A. I think it identical in principle.

(Page 391, fol. 754.)

Q. Upon further experience and observation, do you think that the Morning Glory No. 3 stove, as made by Jagger & Littlefield, from and during 1863 to the present time, is an improvement on the Littlefield stove of January, 1854?

A. I do.

(Pages 395-6.) JACOB MESSENGER—*Direct:*

Q. Are you familiar with the construction of the stove as made under the patent of April 15, 1851?

A. I am.

Q. Are you familiar with the construction of the stove as made under the application of December 30, 1852?

A. I am.

Q. How does the latter differ from the former?

A. The reservoir and circular register were added.

Q. Does the former, in your opinion, contain the germ from which the latter was derived?

A. I think it does.

Q. How does the construction of the stoves called the Lowell Gas Burner, Perpetim Coal Burner, Brilliant, and Littlefield Coal Burner, compare with those constructed under the application of December 30, 1852?

A. They are constructed on the same principle as the latter.

Q. How does the Morning Glory No. 1, as constructed under the patent of January 24, 1854, June 25, 1861, compare with those last named?

A. The principle of this stove is the same as those before named. The fire-bars are made of soap-stone instead of iron.

Q. How does the Morning Glory No. 2, as constructed by the defendants in December, 1862, under patents of January 24, 1854, and December 9, 1862, with a fire-pot containing a series of obliquely-shaped mouths or openings, compare with the Lowell Gas Burner, and others named?

A. The principle of the stove is the same, the difference was in the shape of the fire-pot.

Q. How does the Morning Glory No. 3, as made by the defendants from 1863 to the present time, under patents of January 24, 1854, December 9, 1862, and August 18, 1863, with a suspended fire-pot and reservoir, compare with them?

A. I think the principle of the stove is the same as the others named. The reservoir is suspended by rods. The fire-pot is soled and bell-shaped, and suspended into the ash-pit. The fire passes into the combustion-chamber between the top of the fire-pot, and base of the reservoir. The circular register is placed on the top of the pot.

Gas Burner," the "Perpetine Coal Burner," the "Brilliant," and the "Littlefield Coal Burner," which were respectively constructed under the patent granted to Littlefield, Jan. 24, 1854?

A. I have.

Q. Describe the relations of the six stoves named to each other?

A. The stove of 1851 contained the grated fire-pot, the chamber between that and the outside shell, and the mica lights. In the stove of 1852, the covered reservoir and cylindrical register were added to the features before named. The "Brilliant" was constructed in principle like the stove of 1852; the "Lowell Gas Burner" was constructed on the same principle as the stove of 1852 and the "Brilliant," except that the revertible flues and the cylindrical register were omitted; the "Perpetim" and the "Littlefield Coal Burner" were constructed strictly in accordance with the principle contained in the stove of 1852.

Q. Are you familiar with the principle and construction of the stove made by the defendants, called "Morning Glory"?

A. I am.

Q. State the difference, if any, between this stove and the five last before mentioned?

A. I think it identical in principle.

(Page 391, fol. 754.)

Q. Upon further experience and observation, do you think that the Morning Glory No. 3 stove, as made by Jagger & Littlefield, from and during 1863 to the present time, is an improvement on the Littlefield stove of January, 1854?

A. I do.

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Q. Are you familiar with the construction of the stove as made under the patent of April 15, 1851?

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Q. Are you familiar with the construction of the stove as made under the application of December 30, 1852?

A. I am.

Q. How does the latter differ from the former?

A. The reservoir and circular register were added.

Q. Does the former, in your opinion, contain the germ from which the latter was derived?

A. I think it does.

Q. How does the construction of the stoves called the Lowell Gas Burner, Perpetim Coal Burner, Brilliant, and Littlefield Coal Burner, compare with those constructed under the application of December 30, 1852?

A. They are constructed on the same principle as the latter.

Q. How does the Morning Glory No. 1, as constructed under the patent of January 24, 1854, June 25, 1861, compare with those last named?

A. The principle of this stove is the same as those before named. The fire-bars are made of soap-stone instead of iron.

Q. How does the Morning Glory No. 2, as constructed by the defendants in December, 1862, under patents of January 24, 1854, and December 9, 1862, with a fire-pot containing a series of obliquely-shaped mouths or openings, compare with the Lowell Gas Burner, and others named?

A. The principle of the stove is the same, the difference was in the shape of the fire-pot.

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(Page 399.) S. W. GIBBS—*Direct:*

Q. Have you seen and examined the stove made in accordance with the patent granted to Littlefield in 1851?

A. I have seen the stove marked D. G. Littlefield, patented 1851.

Q. What has that stove in common with the patterns made by you for Littlefield?

A. It has the grated fire-pot, the chamber formed between that and the exterior case, and the mica lights.

Q. Have you seen and examined the stove made in accordance with the application for a patent made by Littlefield, December 30, 1852?

A. I have.

Q. How does that stove compare in principle and construction with the pattern as made by you for him?

A. It has the same grated fire-pot, the covered reservoir, the chamber formed between that and the exterior case, and the mica lights.

(Pages 403–4.) JOHN G. TREADWELL—*Direct:*

Q. Did Dennis G. Littlefield, one of the defendants in this cause, come to Albany in the spring of 1853, with a parlor coal stove, which he took means to exhibit to Treadwell & Perry?

A. He did.

Q. Did he speak of this stove as being an improvement on one formerly made by him?

A. He said he had been experimenting a good deal with stoves; and had made and patented a stove in April, 1851, which was quite satisfactory as a coal burner, but that the one then shown was an improvement on it. He described the former as a stove for burning coal.

Q. Did he show you this stove of 1851, or the specifications or drawings of same, at that or any other time?

A. I think not.

Q. Did he ever speak of it to you as being a cooking stove, or claim for it any other merit than as being well adapted to burning the inflammable gases of anthracite coal?

A. I think not.

Q. What did he say about having applied for a patent on this stove as shown to you?

A. He stated that he had made application for a patent on it.

Q. Have you seen a copy of this application and drawings?

A. I have seen a copy of the specification and drawings that were attached to the application of December 30, 1852, which appear to represent substantially the stove as shown to me in 1853.

Q. Have you since that date examined the stove of 1851? If so, describe the relations of the two stoves.

A. I have several times examined the two stoves (1851 and 1852) during the last three years. The former was provided with a "cylindrical grated fire-pot," a partial "combustion chamber" between that and the exterior shell, and a partially "illuminating case." The latter was provided with a "supplying-cylinder," which had an "inside cover," in addition to the "cylindrical grated fire-pot," with a more complete "combustion chamber," with a "register encircling the fire-pot," and with more "illuminating" surface to the exterior case.

Q. Was not the stove of 1852, in your opinion, a legitimate improvement on the stove of 1851?

A. I think it was.

Q. From the statements made to you by Littlefield, in 1853, do you think such was then his opinion?

A. I think it was.

Extracts from the Proofs, Showing all the Testimony Introduced by the Complainant, as to the Infringement by Defendants.

(Page 211.) JOHN S. PERRY—*Direct*.

Q. Have you seen and examined the stove made by the defendants and called the "Morning Glory," with fire-pot patented by Littlefield, June 25, 1861?

A. I have so.

Q. Is that stove constructed on the same principle as the "Lowell Gas-Burner," "Perpetine Coal Burner," "Brilliant," and "Littlefield Coal Burner," as made by Treadwell & Perry and their successors, under the contract of April 5, 1853?

A. It is identical with it.

Q. Have you seen and examined the stove called the "Morning Glory," as made by Jagger & Littlefield in December, 1862, and for a few months subsequent thereto?

A. I have, and also used one of them for several weeks.

Q. How does it differ from the "Morning Glory," as made by them previous to December, 1862?

A. The only difference is in the openings in the fire-pot; in the first stove the fire passes out of the fire-pot between a series of vertical bars; in the second it passes out through a series of obliquely-formed mouths.

Q. Was the latter stove an improvement upon the former?

A. It was not; it has been condemned and abandoned.

Q. Have you seen, and are you familiar with the third pattern of "Morning Glory," as made by Jagger & Littlefield during 1863?

A. I have seen it, and understand its construction.

Q. In what does it differ from the former?

A. The opening for the fire-pot is clear and unobstructed, which is produced by suspending the reservoir from the upper part of the stove.

Q. Do you consider this third mode of constructing the fire-pot in the "Morning Glory," as an improvement upon the others?

A. I think it is not an improvement upon the stove as first made.

Q. Is the "Morning Glory" stove, as made with the second and third arrangement of fire-pots, also constructed on the same principle as the "Lowell Gas Burner," "Perpetine Coal Burner," "Brilliant" and "Littlefield Coal Burner," as manufactured and sold by Treadwell & Perry and their successors, under the contract of April 5, 1853?

A. It is.

(Page 315.) Wm. B. Treadwell—*Direct:*

Q. Are you familiar with the stove made by Littlefield, and for which he applied for a patent, December 30, 1852?

A. I am.

Q. What relation has that stove to the "Lowell Gas Burner," "Perpetine Coal Burner," "Brilliant," and "Littlefield Coal Burner"?

A. It is the same thing, with the revertible flue omitted.

Q. Are you familiar with the construction of the stove called the "Morning Glory," made by the defendants, with soapstone fire-base, as patented by Littlefield, June, 25, 1861?

A. I am.

Q. What relation has that stove to those above named?

A. I think it is constructed on the same principle.

Q. Are you familiar with the construction of the "Morning

Glory," as made by the defendants, with a series of obliquely-formed mouths or openings in the fire-pot?

A. I am.

Q. What relation has that stove to the "Lowell Gas Burner" and others before named?

A. I think the principle is the same.

Q. Are you familiar with the construction of the third pattern of the said "Morning Glory," as made by the defendants during 1863, with a suspended reservoir?

A. I am.

Q. What relation has that stove to the "Lowell Gas Burner" and others, as before named?

A. The third pattern is provided with the same flue surrounding the reservoir and passing over the top of the cover of same; also the mica lights. The reservoir is suspended from the upper part of the stove; the fire-pot is bell-shaped and solid; the fire passes between the top of the fire-pot, and bottom of the reservoir, into the chamber.

This testimony was taken before the cause was abated, and prior to the filing of the supplemental bill; also, before the defendant, in pursuance of an order of the court, filed their amended answers to the original bill. After the cause was revived the following testimony was taken:

(Pages 389, 390, fol. 751.) JOHN S. PERRY—*Direct:*

Q. Is it your opinion that the stove of 1854, as made by Treadwell & Perry, is covered by the following described claim, viz.: "The combination of a reserved fuel-supplying cylinder, a separate fire-pot, a chamber to receive the products of combustion, and an exhausting exit flue?

A. It is.

Q. Is not this combination of elements found in the stoves made by Jagger & Littlefield, 1862, 1863, 1864 and 1865, called the Morning Glory Nos. 1, 2 and 3, respectively?

A. It is.

Q. Then are not these three stoves a clear infringement on the patent of January 24, 1854, or the re-issues of same?

A. It is my opinion that they are.

(Page 391–2, fol. 754.) ANDREW DICKEY—*Direct:*

Q. Upon further experience and observation, do you think that the Morning Glory No. 3 stove, as made by Jagger & Littlefield, from and during 1863 to the present time, is an improvement on the Littlefield stove of January, 1854?

A. I do.

Q. Are not the stoves as made by Jagger & Littlefield, and known as the "Morning Glory" Nos. 1 and 2, respectively, equally infringements on this patent under that claim?

A. They are.

Q. Is it your opinion that the stove of January, 1854, as made by Treadwell & Perry and successors, is covered by the following-described claim, viz.: "The combination of a reserve-fuel supplying-cylinder, a separate fire-pot, a chamber to receive the products of combustion, and an exhausting exit-flue?

A. It is.

Q. Is not this combination of elements found in the stove called the "Morning Glory No. 3," that has been made by Jagger & Littlefield during the past two years?

A. It is.

Q. Then is not this stove called the "Morning Glory No. 3," in your opinion, an infringement upon the patent of January 24, 1854, or re-issues of the same?

A. It is.

(Page 396, fol. 761.) JACOB MESSENGER—*Direct:*

Q. Is it your opinion that the stove called the "Morning Glory No. 3," as made by Jagger & Littlefield, during 1863, 1864, and 1865, to this date, contains the "combination of a reserve-fuel supplying-cylinder, a separate fire-pot, a chamber to receive the products of combustion, and an exhausting exit-flue?

A. It is.

Q. Is not this combination found in the stove made by Treadwell & Perry under patent January 24, 1854?

A. It is.

Q. Then is not the stove made by Jagger & Littlefield a clear infringement of this patent?

A. I think it is.

(Page 398.) WM. B. TREADWELL—*Direct:*

Q. Do you understand that the stoves, as made by your firms, are covered by a patent for the following-described claim, viz.: "The combination of a reserve-fuel supplying-cylinder, a separate fire-pot, a chamber to receive the products of combustion, and an exhausting exit-flue?

A. I so understand it, and that this is claimed in a re-issue of patent of January 24, 1854, dated February 28, 1865.

Q. Does not the stove made by Jagger & Littlefield, in 1862, and called the Morning Glory No. 1, patented January 24, 1854, and June 25, 1861, contain this combination of elements?

A. It does.

Q. Does not the same stove, as made by said firm in 1862, and called Morning Glory No. 2, patented January 24, 1854, and Dec. 9, 1862, also contain the same combination of elements?

A. I think it does.

Q. Does not the same stove, as made by said firm in 1863, 1864, and 1865, and called Morning Glory No. 3, patented Janu-

ary 24, 1854, December 9, 1862, and August 18, 1863, also contain the same combination of elements?

A. It does.

Q. Then are not these three stoves, viz., the Morning Glory Nos. 1, 2 and 3, all infringements of the patent of January 24, 1854, as re-issued February 28, 1865?

A. I think they are.

(Page 402.) S. W. GIBBS—*Direct:*

Q. In a re-issue granted to Littlefield, November 8, 1864, on the patent of January 24, 1854, he makes this claim: "The arrangement, adaptation, and combination with a fuel-supplying cylinder stove, of an illuminating case to the chamber which receives light, and the gaseous products of combustion from the burning fuel, when said case is illuminated by windows or glazed apertures, arranged continuously upon every side, or in so much of its surfaces as may be fully exposed to view." Was this element as described found complete in the patterns as made by you for Littlefield in 1853, and as improved by you in 1854?

A. It was.

Q. Was it not found complete in the stove called the "Morning Glory No. 1," as made and sold by Jagger & Littlefield in 1862?

A. It was.

Q. Was it found complete in the stove called "Morning Glory, No. 2," as made and sold by Jagger & Littlefield in 1863?

A. It was.

Q. Was it found complete in the stove called "Morning Glory, No. 3," as made by Jagger & Littlefield, in 1863 and 1864?

A. It was.

Q. Is it not your opinion that the manufacture and sale of these stoves infringes the rights of the owner of the patent of January 24, 1854?

A. I think it does.

(Page 411.) JOHN G. TREADWELL—*Direct:*

Q. Suppose the patent of January 24, 1854, or a reissue of the same, secures to Littlefield the following claim, viz.: "The combination of a fuel-supplying cylinder with a fire-pot, when the said supplying-cylinder has its cover-opening inclosed within a chamber or space communicating not only with the outlet from the fire-pot, but also with the exit-flues;" does not the exclusive right to the use of this invention within the States of New York and Connecticut, also belong to the owner of the contract of April 5, 1853?

A. I think it does.

Q. Was not this invention shown complete in the stove of 1852, 1853 and 1854, as made from patterns constructed by Littlefield?

A. It was.

Q. Was it not found complete in the stoves called the "Morning Glory, Nos. 1 and 2." respectively, as made by Jagger & Littlefield, in 1862 and 1863?

A. It was.

Q. Is it not found complete in the stove called the "Morning Glory, No. 3," as made by Jagger & Littlefield, from the summer of 1863, until the present time?

A. I think it is complete in that stove.

Q. Then, in your opinion, does not the manufacture and sale of these stoves trespass upon the rights of the owner of the contract of April 5, 1853?

A. I think it does.

Q. Suppose the patent of January 24, 1854, or re-issues of same, secured to Littlefield the following described claim, viz.: "The combination of a reserve-fuel supplying-cylinder, a separate fire-pot, a chamber to receive the products of combustion, and an exhausting exit flue;" also, "the arrangement, adaptation, and combination with a fuel-supplying stove, of a cover so hinged to the top plate of the stove that it may be swung open on a horizontal plane;" does not the exclusive right to the use of these inventions in the States of New York and Connecticut, belong to the owner of the contract of April 5, 1853?

A. I think it does.

Q. Was not the first mentioned of these inventions found com-

plete in the stoves of 1852, 1853 and 1854 as made from patterns furnished by Littlefield?

A. It was.

Q. Were not both inventions found complete in the stoves called the "Morning Glory, Nos. 1 and 2," respectively, as made and sold by Jagger & Littlefield in 1862 and 1863?

A. I think they were.

Q. Are not both inventions found complete in the stoves called the "Morning Glory, No 3," as made by Jagger & Littlefield from summer of 1863 until present time?

A. They are.

Q. Then, in your opinion, does not the manufacture and sale within the States of New York and Connecticut of these stoves called the "Morning Glory, Nos. 1. 2, and 3," respectively, trespass upon the rights of the owner of the contract of April 5, 1853?

A. I think it does.

It will be observed, that all the proofs relating to infringement, taken subsequent to the filing of the supplemental bill, were to show an infringement of the re-issue patents set out in said bill, which were granted to Littlefield on the 8th and 22d of November, 1864; the proofs showing that the said re-issue patents were infringed by reason of the making of the said "Nos. 2 and 3 Morning Glory," the constructions patented December 9th, 1862, and August 18th, 1863, which patents were set out in said bill.

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A Summary of all the Proofs before the Master, that have any Bearing upon the Question of Profits made by the Defendants, by Reason of Manufacturing the Morning Glory Stoves.

Decree of reference filed September 8th, 1866. Summons issued for the defendants to appear for examination, and to produce their books, papers, and vouchers at the office of the Hon. John H. Reynolds, counsel for complainant, September 25, 1866; at which time all the parties appeared; defendants producing their books, as marked, A, B, C, D, F. The Master decided it proper to select and appoint an accountant to draw off abstracts of the stove accounts in question; and appointed John A. Zweeres for this purpose, (page 554).

September 26.

The books were delivered by the Master into the hands of said accountant, (page 554).

October 13, 1866.

DENNIS G. LITTLEFIELD, being duly sworn, was asked by the plaintiff as follows, (page 555):

"1. Q. What date was the firm of Jagger & Littlefield formed?

"A. About May 30th, 1862."

Following this were forty-seven interrogatories, none of which had any reference to the subject matter that the Master was directed to "ascertain and take and report." The defendants then made the following proposition, which was entered upon the minutes (page 558).

"*Proposition of defendants.*

"The defendants offer within a reasonable time to make and

submit to the Master a full statement of all the advantages and profits which the defendants or either of them have received or which have arisen or accrued to them or either of them by the manufacture, use or sale of all stoves concerning which the decree in this cause made August 20, 1866, orders that the Master is to ascertain, take and state and report an account, which statement shall be verified by their oaths and in regard to which they will submit themselves to examination before the Master, and will also submit to him all documents, books, vouchers and papers upon which the same or any part thereof are founded. The statement shall also contain a true account of the number, description and cost of all stoves made by them of the kind embraced in said decree, and of the prices for which the same were sold.

"Adjourned to 15th inst., at 7½ P. M."

October 15, 1866.

Complainant was permitted by the Master to proceed in matters that were irrelevant, notwithstanding said proposition, such as the following interrogatories, viz.:

"49. Q. What were the apparent profits made on the Morning Glory stoves in 1861, as shown by the figures which you submitted to E. Corning & Co.?

"52. Q. Who is the president of the Littlefield Stove Manufacturing Company?" referring to parties that were in no way connected with this controversy.

This sort of interrogatories were continued until it was ascertained, in reply to the 61st interrogatory, that the defendants had made "three different constructions" of the "Morning Glory" stoves, Nos. 1, 2 and 3. Weight of the patterns for the No. 1 stove stated (63, Q.); price of castings for stoves and furnaces in 1862 stated (74, Q.); average cost of mica stated (116, Q.); the Nos. 1, 2 and 3 patterns of Morning Glory stove were made in 1863 (142, Q.); one-third each (143, Q.); weight of patterns of the No. 14 and 16 of No. 2 stove stated (146, Q.); weight of the No. 3 patterns stated (148, Q.); price of stove and furnace castings per ton in 1863 stated (152. Q.); weight of sets of castings in 1863 stated (173, Q.); cost of making the sheet iron work in 1863 stated (210, Q.); weight of the Russian sheet iron work in 1863 stated (211, Q.); weight of common iron stated (213, Q.);

cost of soap stone, or fire brick, stated (216, Q.); cost to enamel the urns in 1862 stated (225, Q.); cost of stove and furnace castings in 1864 stated (230, Q.); cost of drilling included in cost of castings (233, Q.); the No. 3 pattern of the stoves were made in 1864 (250, Q.), stated, under objections, that it was "irrelevant and immaterial," and did not tend to show "the profits actually derived;" that defendants "calculated to make about thirty per cent as the difference between what (the stoves) cost to make them from the sand, and what they would be sold for during that year (1864); this does not include the incidental items" (272, Q.); made no stoves from January 1st to July 1st, 1865, (274, Q.).

October 31.

Defendant IRA JAGGER, being duly sworn, testified as follows:

"292. Q. What date was the firm of Jagger & Littlefield formed?

"A. Sometime in May, 1862.

"293. Q. What were the principal stoves or other articles that you purposed at that time to manufacture?

"A. Hot-air furnaces for brickwork, portable furnaces, parlor furnaces, and the stove called the Morning Glory."

Testified that the ledger shows "a final balance (of profits) for the whole time of the co-partnership of Jagger & Littlefield (upon their entire business, of furnace and stove making), of $50,758.35, out of which should come an allowance for losses and uncollected debts, and bad debts" (354, Q.); aimed to place upon "the supposed cost of the stoves (in question) for material and labor," "between 30 and 40 per cent. to make the selling price (524, Q.); Jagger kept the books during the co-partnership, (600. Q.).

November 9.

JAMES EASTERLY: Had been occupied on stove patterns, and mounting stoves, and general superintendent in foundries (617, Q.); was in the employ of Jagger & Littlefield during their co-partnership (619, Q.); was familiar with details of their business "so far as regards the mounting" (of the stoves) (620, Q.); considered the cost of mounting stoves "about forty cents" (648, Q.); thinks the stoves cost to mount, in 1863, "about fifty cents each" (675, Q.); thinks that the additional cost to mount in 1864

submit to the Master a full statement of all the advantages and profits which the defendants or either of them have received or which have arisen or accrued to them or either of them by the manufacture, use or sale of all stoves concerning which the decree in this cause made August 20, 1866, orders that the Master is to ascertain, take and state and report an account, which statement shall be verified by their oaths and in regard to which they will submit themselves to examination before the Master, and will also submit to him all documents, books, vouchers and papers upon which the same or any part thereof are founded. The statement shall also contain a true account of the number, description and cost of all stoves made by them of the kind embraced in said decree, and of the prices for which the same were sold.

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JAMES EASTERLY: Had been occupied on stove patterns, and mounting stoves, and general superintendent in foundries (617, Q.); was in the employ of Jagger & Littlefield during their co-partnership (619, Q.); was familiar with details of their business "so far as regards the mounting" (of the stoves) (620, Q.); considered the cost of mounting stoves "about forty cents" (648, Q.); thinks the stoves cost to mount, in 1863, "about fifty cents each" (675, Q.); thinks that the additional cost to mount in 1864

was "about an advance of five cents on a stove" (676, Q.). On cross-examination, admits that it cost more to mount the stoves in 1862 than he had stated (758, 759, 760, Q.); also that the wear and tear of tools would add "four or five cents (cost) on a stove" (806, Q.). On re-direct, gives an estimate of the cost of mounting various sizes and kinds of stoves and furnaces, (835, 836, Q.).

November 20.

JOHN LANNIGAN testified as follows:

"918. Q. Have you carefully weighed and counted the castings and other material for a No. 11 Morning Glory stove of the No. 1 pattern, now in possession of plaintiff?

A. I have.

The castings	weigh	191 lbs.
" rods and shakers	"	$2\frac{1}{2}$ "
" Russia iron	"	4 "
" common iron	"	3 "
" ornaments	in number	3 "
" stove bolts	"	4, 3 1 in., and $1\frac{3}{4}$ in.
" turnkeys and catches	"	12
" rivets	in "	37
" soapstone bars	"	24

The size of Russia iron body, 14 by 46 inches.

919. Q. What is the usual number of Russia sheet iron used for making stoves of that class and size?

Objected to as incompetent and immaterial.

A. Number ten.

920. Q. State the same particulars as to No. 12 of the No. 2 pattern.

A. I have weighed and counted as follows:

The castings	weigh	233 lbs.
" rods and shakers	"	$2\frac{1}{2}$ "
" Russia iron	"	$4\frac{1}{2}$ "
" common iron	"	$4\frac{1}{2}$ "
" ornaments	in number	3
" stove bolts	"	5,-4 1 in., and $1\frac{3}{4}$ in.
" turnkeys and catches	"	12
" rivets	"	37
" soapstone blocks	"	8

Size of Russia iron in body, 14 by 49 inches. The usual number for this size of stove is No. 11 Russia sheet iron.

921. Q. State the same particulars as to No. 9 of the No. 3 pattern?

A. I have weighed and counted as follows:

The castings	weigh	169	lbs.
" rods and shaker	"	2½	"
" Russia iron	"	4	"
" common iron	"	2	"
" ornaments	in number are	3	
" stove bolts	"	13, 5 one in. and 8 1¼ in.	
" turnkeys and catches	"	12	
" rivets	"	37	
" brick	"	4	

Size of Russia iron in body, 14 by 41¼ inches.

The usual number of this size of stove is generally No. 9 Russia sheet iron.

922. Q. State the same particulars as to No. 10 of the No. 3 pattern?

A. I have weighed and counted as follows:

The castings	weigh	182	lbs.
" rods and shaker	"	2½	"
" Russia iron	"	4	"
" common iron	"	2½	"
" ornaments	in number	3	
" stove bolts	"	13, 8 ¼ in., 5 1 in.	
" turnkeys and catches	"	12	
" rivets	"	37	

Size of Russia sheet iron in body, 14 by 43¾ inches.

The usual number for this size of stove is No. 10 Russia sheet iron.

923. Q. Did you weigh these stoves and count the material, by direction of the plaintiff, in the warehouse of Perry & Co.?

A. Yes."

November 20.

JASPER VAN WORMER testifies as to the cost of sheet iron in 1862, 1863, 1864 and 1865, and the quantity sold to defendants (941, Q.).

November 20.

ANDREW WINTERBURN.—The testimony of this witness had no bearing upon the facts to be ascertained by the master (949 to 964, Q.).

November 20.

JOHN SAYLES.—This witness, who was an "assistant assessor for the 9th division of the 14th internal revenue district," which includes the city of Albany, testified as follows:

"966. Q. State, as appears from the assessor's books, the amounts on which Dennis G. Littlefield has paid an income tax for each year respectively?

Objected to as irrelevant, incompetent, and not showing the questions being investigated on this reference.

"A. For 1862, from January to January	.....	$5,521	59
1863, " "	.....	8,404	00
1864, " "	.....	6,157	00
		$20,082	59

For 1865, nothing rendered for income.

967. Q. Questions repeated as to Ira Jagger?

The same objections.

A. For 1862, from January to January	.....	$4,499	91
1863, " "	.....	9,108	00
1864, " "	.....	7,497	00
		$21,104	91

For 1865, nothing rendered for income."

November 20.

JAMES EASTERLY was further examined (976, Q., to 982, Q.), which testimony, together with his further cross-examination (983 to 987, Q.), was irrelevant.

November 20.

DENNIS G. LITTLEFIELD was further examined. States "the weight of short rods, and the number of bolts and other material required to mount the No. 3 pattern stove" (1015, Q.); also the weight of long rods (1016, Q.); also the average weight of

wrought iron shakers (1017, Q.); also the cost of making sheet iron work, (1019 and 1020, Q.).

States the number of bars required in each size of the No. 1 stove, (1024, 1025, 1026, 1027, Q.).

States that in 1864 the defendants calculated to make a profit of

From	$2.00 to	$2.50	on No.	9 stove.
"	3.00 to	3.50	"	10 "
"	4.50 to	5.00	"	11 "
"	6.50 to	7.50	"	12 "
About	10.00		"	14 "
From	12.00 to	14.00	"	16 "

"This was the difference between the cost of labor and material, and what the customers would pay us for them, according to the list price then established; I mean this was the estimated difference" (1050, Q.).

"States from memory that he had counted, in 1862, the sets of mica composed in five pounds, and gave as an opinion that it came from 15 to 25 cents; and now says from recollection that

The No.	9	set cost	about	15	cents.
"	10	" "		16½	"
"	11	" "		18	"
"	12	" "		22	"
"	14	" "		30	"
"	16	" "		30	"

(1052, Q.)

December 12.

ANDREW DICKEY, clerk for the firm of Perry & Co. (1150, Q.), testified as follows:

"1166. Q. From your knowledge of the cost for the material and labor contained in stoves like the Morning Glory, what do you estimate about the range of average profits beyond such cost during the years 1862, 1863 and 1864?

Objected to as above and as inadmissible, for the reason that it does not appear that the actual profits realized by defendants from the stoves cannot be shown by their books or other proper evidence, and as intended to show what such profits might be—not what they actually were.

A. From $5 to $8 each."

"1197. Q. State the cost of the ornaments upon said stoves respectively for the years 1862, 1863 and 1864?

A. No. 9 cost ..... 18 cents per set.
10 " ..... 18 " "
11 " ..... 21 " "
12 " ..... 22 " "

The above is the average cost for three years."

December 12.

JAMES GRAY gives the weight of the patterns used to manufacture the stoves. (1213, Q.)

December 13.

JOSEPH C. BARNES testifies as to "the number of bundles of each gage of sheet iron sold to defendants during the years 1862, 1863, 1864 respectively. (1227, Q.)

December 13.

JAMES EASTERLY re-examined, but his testimony was irrelevant. (1228 to 1285, Q.)

December 13.

IRA JAGGER—examination resumed:

"1286. Q. Are the books placed in the hands of the court as those showing the business transactions of your firm, intended to show anything except such as relate to transactions made previous to the 1st of April, 1865?

"A. I believe they are not intended to, although there may be some entries made on them of matters that afterwards transpired; I don't remember of any.

"1287. Q. When did Mr. Wasson cease making castings for your firm?

"A. I think it was somewhere about the first of January, 1865.

"1288. Q. Did your firm carry on the foundry and make castings yourselves between the first of January, 1865, and the first of April following?

"A. We did not make any."

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December 20.

JOHN A. ZWEERES, the accountant, (page 667,) testifies that he is "familiar with the principle and practice of book-keeping by double entry." (1352, Q.) Hands to the Master "SCHEDULE A (1354, Q.)—Statement of Morning Glory castings sold by *Jagger & Littlefield*, 1862." Also "SCHEDULE B—*Statement of Morning Glories sold by Jagger & Littlefield.*" Also "SCHEDULE—*Statement of Morning Glories sold by Jagger & Littlefield,*" in 1862, 1863, 1864, 1865, (page 668–9); states the number of pounds of castings sold by this firm, and the amounts charged for the same, also the average price for same per pound (1355, Q.); also the amount charged for mica by said firm (1356, Q.); also the amount charged for brick and soap-stone sold by said firm (1357, Q.); states the weight of castings contained in these stoves, assuming that they are 12 pounds to the 100 heavier than the patterns from which they were moulded (1358, Q.); states the amount of sheet iron purchased by defendants, and its cost "during the years before named" (1862, 1863, 1864, 1865), (1359, Q.); states the cost of "stove keys," also of "stovebolts," also of "stove rods," also of "soapstone," also of "shakers and damper rods," also the cost of "urns," also "cost per set of brick" (1361 to 1367, Q.); states the average price received during the years 1862, '63, '64, '65, for each size of the Morning Glory stoves. (1368, Q.)

December 21.

DENNIS G. LITTLEFIELD further examined, (1377 to 1618, Q.,) the whole of which was irrelevant.

December 29.

ANDREW DICKEY was cross-examined, and testified that the basis of his estimate of profits on the Morning Glory stoves was "taken from the amount of profits that Perry & Co. made on the same class of stoves;" (1682, Q.) testified that he had "not made an estimate in detail, embracing the cost for material and labor of all the different parts of these entire stoves, including the loss for broken castings, bolts, and loss of rivets and other parts incident to the manufacture." (1684, Q.)

December 29.

JOHN MALONE. This witness was examined, but nothing was elicited relating to the subject of inquiry before the Master. (1703 to 1721, Q.)

December 29, 1866.

ANDREW DICKEY re-called, but his further testimony was irrelevant. (1722 to 1745, Q.)

At page 717 of the record, we find the following memorandum: "January 15, 1867, at Albany. at City Hall, at 4 P. M., I attended for examination in presence of parties and counsel, and at the request of plaintiff, proceedings are adjourned to Monday, April 15, at 4 P. M., at City Hall. The Master ordered the accountant to give the books up as soon as possible to the defendants."

At page (717) will be found the following order.

"*March* 25.—On the 25th day of March, 1867, at the Master's office, at Utica, the following order, or notice, was issued, and served in the cause, as will appear by the original, on file, in these words, viz.:

U. S. CIRCUIT COURT—NORTHERN DISTRICT N. Y.

JOHN S. PERRY, Trustee, etc.,
v.
DENNIS G. LITTLEFIELD and IRA JAGGER.
} *In Equity.*

The time designated to present defendants' Abstracts under the reference in this case having expired over 20 days since:

Ordered that unless the same are completed and ready for the Master's inspection and use within 10 days after service of a copy hereof on defendants' solicitor, that then the said books of account delivered them pursuant to my order be redelivered to plaintiff, or his agent and clerk John A. Zweeres on demand.

UTICA, *March* 25, 1867.

Signed, A. A. BOYCE.
U. S. Master."

This order was in the handwriting of the accountant, excepting the signature (2357, Q.), and was served on defendants' solicitor on the 26th March, 1867. (Page 718.)

The defendants never proposed to submit "abstracts;" and the record does not show that there was ever a "time designated" for such purpose.

May 29.

IRA JAGGER again examined, but nothing was elicited relating to the subject of inquiry before the Master. (1746 to 1860 Q.)

May 30.

DENNIS G. LITTLEFIELD further examined, but the matters inquired of had no reference to the subject of inquiry before the Master. (1861 to 1893 Q.)

July 15.

JAMES EASTERLY was again examined, but his testimony was irrelevant. (1894 to 1904 Q.)

July 15.

JOHN A. GOEWEY examined, whose testimony had no reference to the subject of inquiry before the Master. (1905 to 1935 Q.)

July 16.

JAMES EASTERLY, again examined, states his estimate of the cost per stove for tools for mounting in the years 1862, 1863 and 1864. (1949 Q.)

July 16.

ALBION RANSOM examined, but nothing was elicited having reference to the subject of inquiry before the Master. (1970 to 1999 Q.)

July 16.

DENNIS G. LITTLEFIELD again examined, but nothing was inquired of that could aid the Master in his investigations. (2000 to 2030 Q.)

July 16.

TOWNSEND FONDY was examined, but nothing was inquired of having reference to the matter to be ascertained by the Master. (2031 to 2046 Q.)

July 22.

DENNIS G. LITTLEFIELD, examination resumed, testified, that in 1862 "18¾ cents each was paid for making and mounting upon the castings the sheet iron work for No. 9, 10, 11 and 12 Morning Glory stoves; and for No. 14 and 16, 31¼ cents each, for

what was done "by the piece;" that in 1863 the prices were 18 and 37½ cents; that the estimated cost for packing was in the neighborhood of 15 to 20 cents each. (2064 to 2070 Q.)

July 22.

ANDREW DICKEY is further examined, states the "cost per bundle for lath;" "the price per pound for packing cord;" and the "cost of tags per thousand;" for the years 1862, 1863 and 1864 (2073 to 2076 Q.); states the "average weight of wrought iron shakers for these stoves" (2079 Q.); also the weight of the mica (2080 Q.); also the weight of "twelve turn keys and catches (2081 Q.); also the weight of rivets (2082 Q.); also the number used (2083 Q.); also the cost of ornaments. (2086 to 2088 Q.)

July 22.

DENNIS G. LITTLEFIELD, examination resumed, but nothing elicited having reference to the subject of inquiry before the Master. (2089 to 2093 Q.)

July 23.

CHRISTOPHER C. WASSON testified as to the amount of stove and furnace castings charged Jagger & Littlefield in 1863, and the average price per ton. Also the amount charged them in 1864, and the average price per ton (2098 to 2099, Q.); that the terms of credit was "six months" (2104, Q.); that shop room and storeage of plates was included in the price. (2108, Q.)

July 23.

JOHN A. ZWEERES, accountant, testified that he was "employed by the Master among other things, to make a trial balance of the books of the defendants." (2143, Q.)

August 14.

EDMOND STEVENS testified that "during the years 1862, 1863, and 1864, he made wrought iron shakers for the defendants, charging them $2 per 100 for the work, they furnishing the iron." (2154 to 2156, Q.)

August 14.

JAMES EASTERLY was further examined, but nothing was inquired of as to the subject of inquiry before the Master. (2157, 2166, Q.)

August 14.

JOHN A. ZWEERES, accountant, was further examined, and furnished (which was "objected to, as embracing other matters besides the stoves in question") "a statement of the sales for merchandise, under its respective heads, made yearly by the firm of Jagger & Littlefield" (2167, Q.), states "the total amount of the weights, and sales of odd castings during the co-partnership (2173, Q.), the price per ton received (2174, Q.), and for each year (2175, Q.) states the amount received for sales of soapstone, firebrick, and mica." (2176, 2178, Q.).

August 15 *to September* 23.

On cross-examination (page 773), he admits that at this time he was in the employ of complainant (2185 and 2286, Q.); he also admits that he had exceeded the instructions of the Master (see page 554, also 2334, Q.) and acted under instructions of the complainant in making "a statement of defendants' profits" (2280, Q.). To do this, which was his "own idea" (2267, Q.), he fabricates a new set of books, J, K, and L, and founds his statements thereupon (2266, Q.), into which he brings matters taken from the testimony, such as a sale of the business and the entire establishment to one Bonnell, in July, 1865, for $50,000 (2275, Q.). This proceeding, by said accountant, was "objected to as too general, embracing matters for which the defendants are not accountable on this examination; as immaterial and irrelevant in regard to other matters than Morning Glory stoves, and in regard to all matters after April 1st; also as based upon alterations to which defendants are not privy." (Page 754.)

If it had been desirable to ascertain *the nominal profits* made by the defendants, upon their *entire business*, prior to April 1st, 1865, (and they made none of these stoves subsequent to that date (273, 274, 275, 276, Q.); and sold none, excepting two, to Ernst & Seifried (page 758), and nine to J. G. Blakely (page 762), which sales were made contrary to the instructions of Mr. Littlefield (275 and 276 Q.); it would only have been necessary to refer to the defendants' books after this accountant had corrected the errors, where we find $34,165.07 as the amount (2151, Q. and page 755), which figures were thus found, owing to this accountant

omitting to enter to the credit of merchandise, or erasing therefrom, the inventory which he found in defendants' books, of the stock on hand April 1st, 1865, amounting to $16,358.10 (424, 425, 427, 428, and 613, Q.). Now, by adding the amount of this inventory to the amount thus found, which would be equivalent to crediting this inventory to merchandise, it will be ascertained that their entire profits upon their furnace and stove business (which were to be reduced by "uncollected debts and bad debts" (354, Q.) prior to April 1st, 1865, was $50,523.17, which is $235.18 less than sworn to by Mr. Jagger in reply to the last mentioned interrogatory. Said accountant admitted, on his cross-examination, that this "could have been done with a good deal of labor" (2283 Q.). The whole amount of income returned for taxation during this time by both defendants, was $41,187.50 (966, Q.). This corresponds with the testimony of Jagger, also with the finding of this accountant; and completely refutes his own statement founded upon the books J, K, L, which were evidently manufactured for the purpose of showing that the defendants' profits on their entire business, while manufacturing these stoves, amounted to a greater sum than sworn to by Mr. Jagger.

October 9.

JAMES EASTERLY was further cross-examined, and testified that he "never made any calculation of the actual cost" of mounting the stoves, "only an estimate of the cost to the best" of his judgment, (2368 Q.); that his evidence as regards the cost of manufacturing "is all estimated." "Don't know anything about the actual cost." (2369 Q.)

October 10.

ANDREW DICKEY was further cross-examined, and testified that he had no "means of information as to the profits, if any," which the defendants made on the Morning Glory stoves, except what Perry & Co. made on "their stoves called the Oriental." (2384, Q.) He further testified as follows:

October 28.

"2479. Q. State whether the document now handed you is a certified copy of a re-issue of letters patent granted S. B. Sexton, of Baltimore, September 27th, 1864, for improvements in base burning stoves?

"A. It is.

"2480. Q. Please state what are the claims secured by such letters patent?

"A. *First.* A stove for warming or heating purposes, constructed with a fuel magazine supported free from the grate, and a combustion chamber having a fire bed or base burning surface, of a greater diameter than the fuel magazine, so arranged and constructed that the fuel may spread out laterally and form a conical pile and burn in thin layers, and so that the inflamed gases may rise or circulate in a free space, as they are evolved from the entire outer surface of the burning conical pile of coals, substantially as and for the purposes set forth.

"*Second.* In combination with the subject-matter of the first claim, constructing the combustion chamber A, with projecting window frames, substantially as and for the purposes described.

"*Third.* A stove for warming purposes, embracing the features of construction mentioned in my first claim, and the additional feature of the gas or product of combustion, circulating apartment above and around the upper portion of the magazine, substantially as and for the purposes set forth.

"*Fourth.* A stove for warming purposes, wherein the spreading of the coals in a lateral direction from the lower end of the magazine is wholly unobstructed, all around; and at the same time the combustion chamber proper is formed by the outer wall of the stove, and the products of combustion circulated underneath, around, over and in contact with the magazine, whatever may be the form and relative proportions of the parts, substantially as and for the purposes described.

"*Fifth.* The combination of a fuel-supplying magazine H, which has its lower end free from the firebed G, with unobstructed space below it where the fuel may spread out laterally, and burn in a conical pile and in thin layers, with a stove which has illumination doors or windows in its wall A, so constructed and arranged that the fire may be kindled through the apertures or door frames, substantially as set forth.

"*Sixth.* The combination of the free space F, illuminating space or wall A, and gas circulating space P, around the upper part of circumference of the magazine H, in a magazine stove, substantially as and for the purposes described.

"2487. Q. Has the plaintiff in this cause regarded the Morning Glory as an infringement upon the Sexton patents?

"A. He has so regarded the No. 3 Morning Glory."

November 8.

Upon his re-direct examination he testified as follows:

"2636. Q. Assuming that Treadwell & Perry, or their successors have embodied with the Littlefield inventions, and improvements, other inventions and improvements made in base burning stoves by Samuel B. Sexton or others, does this fact militate against the rights secured to them by the contract of April 5th, 1853?

"Objected to as calling for a conclusion of law.

"A. It does not.

"2637. Q. Do you know of any base burning stove that was made previous to 1859, the date of Mr. Sexton's patent in which the outer wall of the stove forming the combustion chamber proper is combined with a free space for the burning of the gases, etc.?

"A. I do not.

"2638. Q. Have you regarded the stove called the Morning Glory No. 3, as being an infringement of Sexton's patent?

"Objected to as immaterial.

"A. I have."

November 9.

Upon further cross-examination he testified as follows:

"2659. Q. What stoves besides the Morning Glory stoves can you name which are self-feeding, base burning stoves, and which have been sold in the stove market at Albany, within five years last?

"A. The Excelsior, made by John F. Rathbone; the Morning Light, by Shear, Packard & Co.; the American base burner, by Van Wormer & McGarvey; the Oriental, by Perry & Co.

"2660. Q. Are all of these stoves now sold by the parties named?

"A. They are."

Dec. 4, 1867, *to Jan.* 4, 1868.

The defendant, "DENNIS G. LITTLEFIELD, was further examined by plaintiff in person," but nothing was inquired of, or

stated, that could aid the matter in finding the profits. (3004 to 4122, Q.)

January 5.

ANDREW DICKEY was further examined, but nothing was inquired of, or stated, that could aid the Master in finding the profits. (4123 to 4152, Q.)

January 5.

The re-direct examination of DENNIS G. LITTLEFIELD was resumed, but nothing was inquired of relating to the matter to be ascertained by the master. (4153 to 4158, Q.)

January 5.

ANDREW DICKEY was then cross-examined, but nothing was elicited to aid in the inquiry before the master. (4159 to 4183, Q.)

January 5.

DENNIS G. LITTLEFIELD re-direct resumed, but nothing was inquired of that could aid the master in finding the profits. (4184 to 4208, Q.)

January 18.

The COMPLAINANT then offered his own testimony, under objection to his "being sworn or giving any testimony, upon the ground that he is a party to the suit, and therefore not competent to testify as a witness in this cause." His testimony, however, was totally irrelevant to the subject of inquiry before the master. (4209 to 4424, Q.)

These were all the witnesses examined before the Master; and all of them were called by complainant.

January 18. (Page 1073.)

"The plaintiff, JOHN S. PERRY, in person, here states that the testimony on the part of the plaintiff is here finished, except so far as further examination may be necessary by contra testimony, to be introduced by defendants."

January 18. (Page 1073.)

"The defendants' counsel declines to cross-examine the plaintiff, for the reasons stated in the objection to his testimony."

"Adjourned to January 21st, at 11 A. M."

March 30. (Page 1074.)

"At City Hall, at Albany, at 10 A. M.," the master attended, "when the plaintiff offered in evidence an agreement between Dennis G. Littlefield and Treadwell & Perry, dated September 10, 1853, and marked this day by the master as exhibit AA, a true copy of which is filed with the master."

"Defendants' counsel objects to the admission of the agreement, on the ground that the testimony has already been closed; also, that the evidence offered is irrelevant.

"Adjourned to April 20, (1868,) at City Hall, at Albany, for final submission and argument on proofs in the case."

There was no proof before the Master going to show the extent of the increased value of these stoves, by reason of their "containing said improvements or any of them." And there was none tending to show the amount of "gains and advantages which the said defendants, or either of them, have received, or which have arisen or accrued to them, or either of them, from the manufacture, use or sale of stoves within the states of New York and Connecticut, embracing the improvements described in and covered by said letters patent, and the re-issues thereof, or any of them, mentioned in the bills of complaint."

The proof, so far as it tended to show anything, had for its object to show that the defendants had made some of their profits, by reason of making and selling the Morning Glory stoves; and that said stoves embraced some of the "improvements described in, and covered by said letters patent;" but how much, or how little, does not appear.

The time price which this firm charged their customers for these stoves, was given in evidence, taken from defendants' day books; but the expense of advertising and selling the same, and the deductions for cash payments, or deductions on settlement with customers, does not appear; nor does the loss, or probable loss on these stoves, by bad debts, appear.

The cost, or probable cost, to produce these stoves, and the profits thereon, were not shown by the evidence. The defendants were willing to make a statement in this respect, upon "their books, papers and vouchers," which had been "delivered by the Master into the hands" of the "plaintiff, or his agent and clerk,

John A. Zwecres" (pages 554 and 717), and in connection therewith a "statement * * * verified by their oaths, and in regard to which they * * * were willing to submit themselves to examination before the Master, and * * * submit to him all documents, books, vouchers and papers upon which the same or any part thereof are founded" (page 558).

The record will show that this proposition was not heeded; that said books were continued in the hands of the plaintiff, or his agent and clerk (see page 717); while the oral examinations of the defendants were continued; and they were required to answer all sorts of interrogatories as to their previous business transactions; most of which were totally irrelevant to the subject of inquiry before the Master.

Rent of buildings where the business was carried on, and interest on capital invested in the business, is nowhere mentioned in the proofs. The cost and expense of the original patterns made of wood, or metal, or both combined, is nowhere mentioned. Finishing up and fitting said patterns upon "*follow-boards*" ready for use, and keeping the same in repair while in use in moulding in the sand for casting the plates composing these stoves, is nowhere mentioned. The flasks containing the sand in which the mould is made, and which burn and wear out during the process of casting, are nowhere mentioned. Internal revenue, amounting to many thousands of dollars (the total sales of these stoves amounting to $168,265.27, page 669), must have been paid by the defendants in compliance with the law, which could but reduce the net receipts upon the sale of these stoves, as shown by their books. This amount is nowhere mentioned in the proofs; yet the defendants' cash, and other books, showed the payment of such a tax. (405, Q.)

The cost of castings by the ton is given, but this does not give the cost of castings contained in these stoves, as the proofs nowhere show the loss, or the estimated loss, by breakage in mounting, and in shipping and handling (see 1684, Q.). The cost of rods and bolts is given; but this does not give the cost of these articles used up in mounting these stoves, for the reason, that the loss, or the estimated loss, by breakage, is not given. The same may be said of the sheet-iron, the ornaments, the rivets, the soapstone, and

fire-brick, and all other articles entering into the cost of these stoves.

For these reasons, it is absolutely impossible for any person to take these proofs and ascertain the profits made by the defendants by the "manufacture, use or sale" of these stoves, within the prohibited district, or even to guess out the amount, with any degree of certainty. This, the Master was not justified in doing. Besides, there was no deduction or allowance made by the Master, by reason that the No. 3 Morning Glory stove was proved to have "infringed upon," and "contained" "improvements" secured to one Samuel B. Sexton. (2479, 2480. 2487, 2636, 2637 and 2638, Q. and answers. His report should only have been for a nominal amount, or no amount at all, on the ground that the plaintiff had failed in his proofs.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Dennis G. Littlefield and Ira Jagger, Appellants,

against

John S. Perry, Trustee and Executor of Mary J. Perry, deceased, Appellee.

ABSTRACT AND BRIEF FOR APPELLEE.

E. W. STOUGHTON,
JOHN H. REYNOLDS,
Of Counsel for Appellee.

ALBANY:
WEED, PARSONS AND COMPANY, PRINTERS.
1874.

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against
JOHN S. PERRY, Trustee and Executor of MARY J. PERRY, deceased, Appellee.

ABSTRACT AND BRIEF FOR APPELLEE.

The appeal in this case is from a final decree pronounced by the Circuit Court of the United States for Northern District of New York upon a bill filed by the appellee against the appellants to restrain the infringement of patents and for an account of profits, etc., and in the court below the appellee had an award in his favor against the appellants for $61,486.37 besides costs.

Record pp. 196, 197, fols. 456, 457.

The original bill in the cause was filed by Mary J. Perry against Littlefield and Jagger on the 27th of August, 1862, praying among other things for an injunction restraining the defendants from manufacturing and vending certain

coal stoves to which the complainant claimed the exclusive right within the States of New York and Connecticut.

Record, Bill pp. 3 to 30.

The bill of complaint sets out the fact that on the 15th of April, 1851, the defendant, Dennis G. Littlefield, procured a patent for an improvement in stoves.

Record, Bill pp. 3 to 5, fols. 12 to 15.

That in 1852 he made improvements thereon and on the 30th day of December, 1852, he filed in the Patent Office a specification for a patent for such further improvements.

Record, Bill pp. 5 to 7, fols. 15 to 19.

While this application was pending in the patent office and on the 5th of April, 1853, Littlefield made a contract with William B. Treadwell and John S. Perry under the provisions of which the original complainant claimed the rights, which it was the object of this suit to establish.

Record, Bill pp. 7 to 9, fols. 19 to 21.

This agreement recited the issue of the patent to Littlefield of the date of the 15th of April, 1851, and the fact that an application was then pending in the patent office for an improvement thereon, and thereupon, for certain valuable considerations therein expressed, Littlefield did "assign and transfer to the said parties of the second part "(Treadwell and Perry), their executors, administrators and "assigns all the right, title and interest which the said party "of the first part (Littlefield) now has or can or may here-"after have in or to the aforesaid inventions, improvement "and patent, or the patent or patents that may be granted "for said inventions, or any improvements therein and on "any extension or extensions thereof, within and through-"out the district and territory embraced within the States "of New York and Connecticut, for and during the term "for which the aforesaid letters patent were granted, and "the terms for which any patent for the aforesaid improve-"ment and any other improvement or improvements there-"of, or extensions for or of either thereof, may be granted

"either to the said party of the first part (Littlefield) or his "heirs, executors, administrators or assigns."

Record, Bill p. 8, fol. 20.

By the same contract Littlefield guaranteed Treadwell & Perry "in the uninterrupted enjoyment of the use, the "right to use, to make, construct, and vend to others to use, "the inventions, improvements and patents aforesaid, within "the territory aforesaid."

Record, Bill p. 8, fol. 21.

The contract further provided that "if the parties of the "second part (Treadwell & Perry) shall, without just cause, "refuse or shall neglect to make and sell said coal-burners to "such extent as the demand therefor shall reasonably warrant "and require, after reasonable notice shall be given to them "by said party of the first part, requiring them so to make "and sell the same, that this assignment and transfer shall "thereafter be void and of no effect, and all the rights and "interests herein and hereby conveyed, shall thereupon re-"vert to the said party of the first part, his executors, admin-"istrators, and assigns."

Record, Bill p. 9, fol. 21.

The Bill further sets forth, that "the said William B. "Treadwell and John S. Perry proceeded with all due dili-"gence to manufacture the stove or burner mentioned in "said letters-patent, assignment, and contract; and during "the year 1853 they manufactured and sold about thirteen "hundred of the same, within the States of New York and "Connecticut."

Record, Bill pp. 11, 12, fol. 26.

Also, that Littlefield was employed by them to travel for the purpose of introducing the coal-burner.

Record, Bill p. 16, fol. 34.

Also, that Littlefield remained several years in their service.

Record, Bill p. 16, fol. 35.

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Record, Bill p. 16, fol. 34.

Also, that Littlefield remained several years in their service.

Record, Bill p. 16, fol. 35.

Also, "That the stoves and burners first manufactured "and sold by said Treadwell & Perry, were made from pat- "terns got up under the personal superintendence and "direction of said Littlefield, and were represented to the "said Treadwell & Perry as being, in all respects, accurate "and correct."

Record, Bill p. 16, fol. 35.

Also, "That in the fall of 1853, a considerable number of "the stoves thus manufactured and sold, were returned to "the said Treadwell & Perry condemned as worthless, and "they were subjected to large losses for that reason."

Record, Bill pp. 16, 17, fol. 35.

Also, "That immediately upon ascertaining that any of "the stoves so manufactured and sold failed to give satis- "faction to the purchasers thereof, the said Treadwell & "Perry, or their successors, set men to work under the "direction of said Littlefield to remedy the defect in the "patterns."

Record, Bill p. 17, fol. 35.

Also, "That during the winter of 1853 and 1854, new "patterns were completed, and new stoves manufactured "therefrom by Treadwell & Perry, or their successors, "which were called by them 'The Brilliant,' and thereafter "for several years, the said Treadwell & Perry, or their suc- "cessors, by means of advertising, the issuing of circulars, "and the employment of the said Littlefield as their agent, "made diligent efforts to sell said stoves within the terri- "tory aforesaid, but by reason of the defects in the stoves "first manufactured, and other causes, it was found impos- "sible to dispose of any considerable number of the said "stoves made upon the said improved patterns."

Record, Bill p. 17, fols. 35, 36.

Also, "That during the year 1858, the said Treadwell & "Perry discovered that the said stoves were growing in "favor with the public, and there was a demand for the "same, and the said Treadwell & Perry proceeded to manu-

"facture the same for the purpose of supplying such de-
"mand, of which the said Dennis G. Littlefied had notice,
"and the said Treadwell & Perry continued to manufacture
"and sell the same, and supplied the public demand for the
"same, until about the 1st of September, 1860; and since
"that period the same has been manufactured and sold by
"parties who have succeeded to the rights of the said
"Treadwell & Perry, under the said contract and trans-
"fer hereinbefore set forth."

Record, Bill p. 17, fol. 36.

Also, "That the said Treadwell & Perry, and the parties
"who have succeeded to their rights, have, at all times and
"in every respect, performed with diligence and fidelity all
"and every of the stipulations of the contract and transfer
"hereinbefore set forth, on their part required to be kept
"and performed, and the said contract and transfer is now
"in full force and virtue, and the rights of said Treadwell
"& Perry and their assigns thereunder, wholly unim-
"paired."

Record, Bill p. 17, fol. 36.

It is further alleged in the bill that after the making the foregoing contract and on the 22d of July, 1853, Littlefield withdrew the application for a patent filed in the month of December preceding, and on the same day filed a new application, substantially of the same character, upon which a patent was issued to him on the 24th day of January, 1854.

Record, Bill pp. 12 to 16, fols. 27 to 34.

The bill then avers that "on the 25th day of June, 1861,
"letters patent of the United States, signed, sealed, and
"executed in due form of law, were issued to the said Dennis
"G. Littlefield, for a new and useful improved fire-pot for
"coal stoves."

Record, Bill pp. 17 to 19, fols. 37 to 40.

Again. — That on the 19th of November, 1861, upon a surrender of the patent of the 24th of January, 1854, he

procured two reissues thereof, of that date, upon amended specifications, viz:

Letters Patent No. 10,448, January 24, 1854.
Reissued November 19, 1861. No. 132.

Record, Bill pp. 20 to 23, fols. 41 to 47.

Letters Patent No. 10,448, January 24, 1854.
Reissued November 19, 1861, No. 133.

Record, Bill pp. 23 to 27, fols. 47 to 54.

It is then averred in the bill that by sundry transfers specially stated, the original complainant, Mary J. Perry, has succeeded to all the rights of Treadwell & Perry under the agreement of April 5th, 1853, and in respect to this allegation and transfers special reference will be hereinafter made.

Record, Bill p. 28, fol. 55.

It is also averred "that the defendants without any right "or authority so to do, have been for several months last "past engaged in the manufacture, for the purpose of vend-"ing the same, and have manufactured and vended, within "the States of New York and Connecticut, great numbers "of stoves, embracing all the material and essential features "described in, and covered by the several letters patent "hereinbefore mentioned and set forth, and they give pub-"lic notice that they intend to continue to manufacture and "vend such stoves within the territory aforesaid."

Record, Bill p. 29, fol. 57.

It is also alleged in the bill that "the defendants infringe "upon and violate the exclusive privileges of the complain-"ant."

Record, Bill p. 29, fol. 57.

And, again, that the complainant "has repeatedly re-"quested the said Dennis G. Littlefield and Ira Jagger to "desist and refrain from further making, using, or vending, "or from causing to be made, used, or vended, to others to "be used, within the territory aforesaid, any stoves embrac-

"ing the improvements covered and secured by the said "letters patent, and so assigned."

Record, Bill p. 29, fol. 58.

The defendants answered and also filed several amended answers, to which reference will be hereinafter specially made, and issue was joined, and proofs were taken on the part of the complainant.

Record pp. 31 to 32, fol. 65.
" pp. 34 to 75, fols. 75 to 156.
" pp. 76 to 98, fols. 160 to 216.
" pp. 160 to 177, fols. 346 to 385.
" pp. 198 to 553, fols. 465 to 986.

Upon filing the bill a motion was made for an injunction, according to the prayer thereof, upon the ground of infringement by Littlefield & Jagger, and in November, 1862, an injunction was granted by Mr. Justice Nelson, viz:

"NORTHERN DISTRICT OF NEW YORK.

"MARY J. PERRY *against* DENNIS G. LITTLEFIELD & IRA JAGGER } Nov. 21, 1862. In equity.

"NELSON, C. J.:

"The bill in this case was filed by the plaintiff for the in-"fringement of certain patents granted to D. G. Littlefield, "one of the defendants, for improvements in stoves of "which she claims the exclusive right, by assignment, to "the territories of States of New York and Connecticut, "and, among other things, prays for an injunction enjoin-"ing the defendants against further infringements.

"The answer sets up as the sole ground of defense, that "the letters patent under which the plaintiff claims title "had not been duly assigned to her, or, in the words of the "answer, had not been legally assigned and transferred to "Treadwell & Perry, and from Treadwell & Perry, through "various parties to the complainant, Mary J. Perry.

"The bill sets out various assignments deducing a title "from the patentee to the exclusive right to the use of the

"patents for the territories above mentioned to the com-
"plainant, and duly authenticated copies of the same have
"been produced on this motion for the injunction.

"An affidavit is produced on the part of the defendants,
"showing that the firm of W. & J. Treadwell, Perry &
"Norton, became insolvent in the year 1860, and that all of
"its effects passed into the hands of a receiver, and that
"two of its members were the persons composing the firm
"of Treadwell & Perry, to which the patents in question
"had been assigned, and through whom the complainant
"claims title. This evidence is offered for the purpose of
"disproving the title of the complainant, but the answer is,
"that it does not appear in the case that the firm of W. &
"J. Treadwell, Perry & Norton, had any title to these pat-
"ents or interest therein, and if not, then no interest in
"them, as assets of the firm, passed to the receiver
"The order of the court passed the assets of the firm to
"the receiver and nothing more.

"Injunction granted.

"(Indorsed:) Mary J. Perry *v.* Dennis G. Littlefield &
"Ira Jagger.

"Opinion and dr. ord. inj. (Orig.) filed Nov. 29, 1862."

Record p. 33, fols. 69 to 71.

Subsequent to the several amended answers of the complainants filed December 19, 1862, and the replication of the complainant, filed January 15, 1863, and during the pendency of the cause, a motion was made to dismiss the bill for want of jurisdiction, and denied by Mr. Justice Nelson, as follows:

"We are satisfied that the contract or agreement between
"D. G. L. and Treadwell and Perry, 5th April, 1853,
"vested in them a legal title to the patent of 15th April,
"1851, and an equitable title to the improvements for which
"an application was then pending for a patent, which af-
"ford sufficent ground for the maintenance of this suit in
"equity for an infringement of the same, and that the
"proper remedy is in this court.

"The complainant stands in the place of T. & P.

"Motion to dismiss the bill denied."

Record p. 76, fol. 159.

In June, 1864, the original suit abated by the death of Mary J. Perry and John S. Perry succeeded to all her rights as trustee and executor.

Record pp. 99, 100, fols. 219, 220.

On the 2d January, 1865, John S. Perry, as trustee and executor, on leave duly granted, filed a bill of revivor and suplement, and on the 6th of March following, an order of revivor was entered and the causes put at issue upon further answers and replications to which answers, so far as shall be deemed material, more special reference will be hereinafter made.

Record Bill of R. & S. pp. 100 to 160, fols. 222 to 340.

The supplemental matters set out in the bill of revivor and supplement relate to the reissues of the patent set out in the original bill and are as follows:

August 26, 1862. The reissues of November 19, 1861, were surrendered and reissues in four separate divisions were taken out upon amended specifications, viz;

Letters Patent No. 10,448, dated January 24, 1854. Reissue No. 133 whole No. 1,232, dated November 19, 1861. Reissue No. 1,332, dated August 26, 1862.

Record Bill of R. & S. pp. 102, 103, fols. 228 to 230.

"Letters Patent 10,448, dated January 24, 1854. Re-
"issue No. 133, whole No. 1,237, dated November 19, 1861,
"Reissue No. 1,333, dated August 26, 1862."

Record Bill of R. & S. pp. 103 to 105, fols. 230 to 233.

"Letters Patent No. 10,448, dated January 24, 1854.
"Whole No. 1,236. Reissue No. 132, dated November 19,
"1861. Again reissued No. 1,334, dated August 26, 1862."

Record Bill of R. & S. pp. 105, 106, fols. 233 to 236.

Letters Patent No. 10,448, dated January 24, 1854. Reissue No. 132, dated November 19, 1861. Again reissued No. 1,335, August 26, 1862.

Record Bill of R. & S. pp. 107, 108, fols. 237 to 239.

March 3d, 1863. Two of the reissues of August 26, 1862, were surrendered, and two other reissues taken out upon amended specifications, viz:

"Letters Patent No. 10,448, January 24, 1854. Reis-
"sues November 19, 1861, and August 26, 1862; No.
"1,426, March 3, 1863.

Record Bill of R. & S. pp. 108 to 114, fols. 240 to 251.

"Letters Patent No. 10,448, January 24, 1854. Reissues
"November 19, 1861, and August 26th, 1862; No. 1,427,
"March 3, 1863:

Record Bill of R. & S. pp. 115 to 119, fols. 253 to 260.

May 19, 1863. The remaining two reissues of the 26th of August, 1862, were surrendered and two other reissues taken out upon amended specifications, viz:

"Letters Patent No. 10,448, January 24, 1854. Reissues
"November 19, 1861, and August 26, 1862; No. 1,478,
"May 19, 1863.

Record Bill of R. & S. pp. 124 to 129, fols. 270 to 279.

"Letters Patent No. 10,448, January 24, 1854. Reissues
"November 19, 1861, and August 26, 1862; No. 1,479,
"May 19, 1863.

Record Bill of R. & S. pp. 119 to 124, fols. 261 to 269.

November 8, 1864. Some of the reissues of March 3d, 1863, and May 19, 1863, were surrendered and then separate reissues taken out, viz:

"Letters Patent No. 10,448, January 24, 1854. Reissues
"November 19, 1861; August 26, 1862; March 3, 1863,
"and November 8, 1864, No. 1,813.

Record Bill of R. & S. pp. 129 to 134, fols. 280 to 290.

"Letters Patent No. 10,448, January 24, 1854. Reissues
"November 19, 1861; August 26, 1862; March 3 1863,
and November 18, 1864, No. 1,814.

Record Bill of R. & S. pp. 134 to 136, fols. 290 to 294.

"Letters Patent, No. 10,448, January 24, 1854. Reissues
"November 19, 1861; August 26, 1862; May 19, 1863,
"and November 8, 1864, No. 1,815.

Record Bill of R. & S. pp. 130 to 139, fols. 294 to 298.

November 22d, 1864. Some others of the reissues of May 19, 1863, were surrendered and a farther reissue taken out, viz:

"Letters Patent No. 10,448, January 24, 1854. Reissues "November 19, 1861; August 26, 1862; May 19, 1863, "and November 22, 1864, No. 1,823.

Record Bill of R. & S. pp. 139 to 140, fols. 298 to 299.

December 9, 1862: Littlefield procured an original patent for a further improvement in base burning stoves. No. 37,103.

Record Bill of R. & S. pp. 141 to 146, fols. 302 to 312.

August 18, 1863: Littlefield procured another original patent for an improvement in stoves. No. 39,582.

Record Bill of R. & S. pp. 146 to 152, fols. 312 to 323.

December 22, 1863: The patent of August 18, was surrendered and a re-issue taken out upon an amended specification, viz.: Letters Patent No. 39,582, August 18, 1863. Reissued December 22, 1863, No. 1,594.

Record Bill of R. & S. pp. 152 to 157, fols. 323 to 334.

The defendants answered to the bill of revivor and supplement February 25, and March 4, 1865.

Record pp. 177 to 184, fols. 389 to 412.

The defendants having violated the injunction granted by Mr. Justice Nelson, they were attached and imprisoned.

Record p. 186; fols. 419, 422.

Mr. Justice Nelson also made the following order August 20, 1866:

"Ordered, on the motion of attachment for infringe-"ment in this case, the defendants be fined the taxed costs "and disbursements of proceedings on said motion."

Record p. 188, fol. 427.

The final decree was made by Mr. Justice Nelson, August 20, 1866:

"And it is further ordered, adjudged and decreed, that the "complainant do recover of the said defendants all the "profits, gains, and advantages which the said defendants, or "either of them, have received, or which have arisen or ac- "crued to them, or either of them, from the manufacture, "use, or sale of stoves within the States of New York and "Connecticut, embracing the improvements described in and "covered by the said letters patent and the re-issues thereof, "or any of them, mentioned in the bills of complaint filed "in this cause as aforesaid.

"And it is further ordered, adjudged and decreed, that "the said complainant recover of the said defendants his "costs, charges and disbursements in this suit to be taxed.

"And it is further ordered, adjudged and decreed, that it "be referred to Augustus A. Boyce, Esq., one of the masters "of this court, to ascertain and take and state and report to "the court an account of the gains, advantages, and profits "which the said defendants, or either of them, have receiv- "ed, or which have arisen or accrued to them, or either of "them, from infringing upon the rights of the complainant "by the manufacture, use, or sale of stoves within the States "of New York and Connecticut, containing the said im- "provements, or any of them."

[Record p. 187, fols. 425, 426.

All the inventions and devices secured to Littlefield under the various patents and numerous re-issues were claimed by the complainant in the court below as her exclusive property under the agreement of April 5, 1853, to make, use and vend the stoves protected thereby, within the States of New York and Connecticut, and that claim was approved by Mr. Justice Nelson in the court below.

The original bill alleged in the ordinary form an infringe-

ment by the defendants by the manufacture and sale, within the States of New York and Connecticut, of stoves of the description mentioned in the patents and re-issues and prays for an injunction decree and account, and also that Littlefield should be decreed to give the complainant a proper legal title to the several re-issued patents.

Record, Bill, pp. 29 to 31, fols. 57 to 60.

The prayer of the bill of revivor, etc., as well as the allegation in respect to the infringement of the rights of the complainant are similar to those of the original bill.

Record, Bill of R. & S., pp. 157 to 160, fols. 335 to 339.

On the 6th of March, 1865, issue was joined by a replication filed to separate amended answers of the defendants to the original bill and separate answers to the bill of revivor and supplement, and thereafter further proofs were taken on the part of the complainant. The defendants offered no evidence whatever, and on the 19th of August, 1865, the proofs in the cause were duly closed by order of the court.

Record p. 185, fols. 413 to 416.

Subsequently, and in October, 1865, the cause was brought to a final hearing on pleadings and proofs, before Mr. Justice Nelson, who, on the 20th of August, 1866, made a decretal order, establishing the rights of the complainant and that the defendants had infringed and directed an account, etc.

Record p. 185, fols. 415 to 417.

Under this decretal order an account of profits was taken before a master of the court who, on the 6th of December, 1869, reported that the gains and profits of the defendants made by infringing the complainant's rights were $52,747.82.

Record pp. 188 to 190, fols. 429 to 436.

To this report the defendants filed twenty exceptions.

* * * * * * * *

Record pp. 191 to 194, fols. 440 to 444.

The causes having been argued were overruled by an order of the court made on the 19th of March, 1872, and thereupon a final decree was entered, from which the present appeal is taken.

"At an adjourned term of the circuit court of the United "States of America for the northern district of New York, "in the second circuit, held at the city of Utica, on Tues- "day, the 19th day of March, at the year of our Lord one "thousand eight hundred and seventy-two:

"Present the honorable Lewis B. Woodruff, presiding "judge.

JOHN S. PERRY, Trustee, etc.
against
DENNIS G. LITTLEFIELD and IRA JAGGER.

"This cause having heretofore come on for a hearing upon "exceptions to master's report, and having been argued by "the counsel for the respective parties, and the court having "considered the same: Ordered, that the said exceptions "be, and the same are hereby overruled, and that complain- "ant be allowed to proceed to a decree.

"At a stated term of the circuit court of the United "States for the northern district of New York, held at the "city of Utica on the 19th day of March, in the year of our "Lord one thousand eight hundred and seventy-two:

"Present, the honorable Lewis B. Woodruff, circuit "judge.

"JOHN S. PERRY, Trustee and Executor under the last will and testament of MARY J. PERRY, deceased,
against
DENNIS G. LITTLEFIELD and IRA JAGGER.

"This cause having heretofore come on to be heard upon "the report of Augustus A. Boyce, Esq., one of the mas- "ters of this court, to whom it was referred to ascertain "and take and state and report to this court an account of "the gains, advantages, and profits which the defendants, "or either of them, have received, or which have arisen or "accrued to them, or either of them, from infringing upon "the rights of the complainant by the manufacture, use or sale "of stoves within the States of New York and Connecticut, "containing the said improvements, or any of them, men-

"tioned in the bill of complaint and in the interlocutory "decree, entered in this cause, which report bears date the "6th day of December, 1869, and also upon exceptions "taken to the said report on the part of the said defend- "ants, and upon the equity reserved, and after hearing Mr. "Edwin W. Stoughton and Mr. John H. Reynolds, of coun- "sel for the complainant, and Mr. Lyman Tremain and Mr. "George W. Miller, of counsel for the defendants, and due "deliberation having been thereupon had, it is ordered, ad- "judged, and decreed, and this court, by virtue of the power "and authority therein vested, doth order, adjudge, and "decree that the exceptions taken on the part of the defend- "ants to the said master's report be, and the same hereby "are overruled, and that the said report and all things "therein contained be, and the same hereby is ratified and "confirmed.

"And it is further ordered, adjudged, and decreed, "and this court, by virtue of the power and authority "therein vested, doth order, adjudge, and decree, that "the said defendants pay to the complainant the sum of "sixty-one thousand four hundred and eighty-six dollars and "thirty-seven cents.

"And it is further ordered, adjudged, and decreed, that "the said defendant pay to the said complainant his costs "and disbursements in this suit to be taxed.

"And that the said complainant have execution for such "costs and for the sum above decreed to be paid to the said "complainant as aforesaid."

Record pp. 196, 197, fols. 453 to 457.

It is also proper to state that upon the hearing before the master, as in the cause before final hearing, the defendants gave no evidence on their own behalf, but being called as witnesses by the complainant it is not too much to say, during a protracted investigation, they made every possible effort to evade the disclosure of the truth, in respect to the amount of profits realized from their wrongful acts.

With this general statement of the history of the case it is thought by counsel for the appellee, that the material questions to be considered, may be more clearly and con-

cisely presented to the court, by gathering all the facts of the case in separate connection with the several propositions hereinafter stated, which specially pertain thereto, and thus avoid needless repetition.

It may also be convenient for the court to be referred to an accurate history of the inventions, patents and improvements involved in the present controversy, as they appear by an inspection of the specifications annexed to the patents and re-issues, the stoves manufactured under them, and the acts and proceedings of the respective parties, as appears by the pleadings and proofs in the cause.

1. Dennis G. Littlefield, one of the defendants in this cause, previous to April 15, 1851, resided at Lowell, Mass., and invented, in 1849, a heating stove, which was provided with an oven, or air-heating chamber, placed above the fire-pot.

   Record, Bill, pp. 3, 5, fols. 12, 14.
   Record, Perry, p. 199, fol. 467.
   Record, Littlefield, pp. 448–450, fols. 833–835.
   Record, J. G. Treadwell, p. 403, fol. 771.

2. He made application for patent, on this invention, December 30, 1850.

   Record, Bill, pp. 4, 5, fols. 13–15.

3. From the specifications, "The fire chamber should be "of a size sufficient to receive sticks of wood of the "ordinary size, say about two or three feet in length, "whilst the doorway or opening A should be made "of a width greater than that of the coal fender or "basket K, which is a circular or other proper shaped "hoop or fence, made separate from the fire grate "and to rest upon the floor of the fire chamber and "to surround the grate. This fender or hoop fence "is for the purpose of holding mineral coal, when "such is used for fuel instead of wood; when wood "is used, this fender is to be removed from the fire-

"place, the doorway of such being made large "enough to allow of either the removal or the inser- "tion of the fender, as circumstances may require."

Record, Bill, p. 5, fol. 14.

4. Claim. "My improvements, and what I claim, consists "in the peculiar arrangement or manner of combining "the fire-place, the descending and diving flues, the "ash-pit, the lateral chambers, the ascending flues, "the oven or air-heating chamber, and its surround- "ing flue space, all as represented in the drawings, "and as described. In testimony whereof I have "hereto set my signature this 30th day of December, "A. D. 1850."

Record, Bill, p. 5, fol. 15.

5. This stove was patented April 15, 1851.

Record, Bill, pp. 4, 5, fols. 13, 15.

6. Littlefield says, in describing it, "thus was produced a "base burning or horizontal draft stove, without any "intention on my part."

Record, Littlefield, p. 449, fol. 834.

7. The series of experiments made by Littlefield with his "first stove" described.

Record, Littlefield, p. 448, fol. 833.

8. He stated to Treadwell & Perry, in April, 1853, "that he had been experimenting for some years in "stoves, and had made and patented a base-burner "that was quite satisfactory."

Record, Perry, p. 199, fol. 467.
Record, J. G. Treadwell, p. 403, fol. 771.

9. He says: "Others could see in its construction a "novelty of value, while I could only see a germ "from which a more valuable construction was to "arise."

Record, Littlefield, p. 450, fol. 835.

10. This was not a cooking stove, and was never so designated by Littlefield previous to the commencement of this suit.

Record, Perry, p. 304, fol. 630.
Record, J. G. Treadwell, p. 403, fol. 771.

11. It was known to the trade as a Parlor Cooking Stove —a Cooking Stove is an entirely different article.

Record, Dickey, p. 822, fol. 1691.

12. It was never shown to Treadwell & Perry by Littlefield.

Record, Perry, p. 199, fol. 467.
Record, J. G. Treadwell, p. 401, fol. 771.

13. "It was described in the contract of April 5, 1853, "as a coal burner, so constructed as to produce com- "bustion of the inflammable gases of anthracite "coal."

Record, Bill, p. 8, fol. 20.

a. This was Littlefield's first invention and patent and the basis of his subsequent improvements.

b. He only claimed that it was "a germ, from which a more valuable construction was to arise."

c. Neither the patent nor a stove constructed in accordance with it, was exhibited to Treadwell & Perry.

d. The combination of elements secured therein is not claimed by plaintiff to have been infringed.

14. Littlefield soon after proceeded to make improvements on the stove of 1851.

Record, Bill, p. 5, fol. 15.
Record, Bill, p. 47, fol 110.
Record, Perry, p. 199, fol. 467.
Record, J. G. Treadwell, p. 403, fol. 771.
Record, J. G. Treadwell, p. 450, fol. 836–837.

15. He states that "in the fall of 1852, the supplying "cylinder was combined with the cylindrical, grated "fire-pot, and subsequently patented January 24, "1854."

Record, Littlefield, p. 450, fol. 836.

16. He admits, in his amended answer of December 22, 1862, "that, after the issuing the said letters patent, "he continued making various experiments, looking "to the improvement of the aforesaid patented in- "vention (April 15, 1851); and that, in the fall of "1852, he combined the grated pot of his stove, "patented in 1851, with what he denominated a "'supplying-cylinder;' and for which invention he "made application in due form for a patent; and "that for such purpose he filed in the Patent Office "of the United States, on the 30th day of December, "1852, his specification and claim therefor, as is set "forth in complainant's bill.

Record, Littlefield, p. 47, fol. 110.

17. He says: "Such was the invention of December 30, "1852, viz: a stove having an inverted vat over the "fire-pot, serving as a reservoir to receive the gases "from the burning coal, and pass them through the "fire, and thereby produce their combustion; the "whole extent and object of the adaptation being to "produce an entire and perfect 'combustion of the "inflammable gases of anthracite coal.'"

Record, Littlefield, p. 498, fol. 904.

18. He made application for a patent on these improvements December 30, 1852.

Record Bill, p. 4, 5, fol. 13–15.
Record, Littlefield, p. 47, fol. 110.
Record, Perry, p. 199, fol. 467.
Record, J. G. Treadwell, p. 403, fol. 771.

APPLICATION OF DECEMBER 30, 1852.

From the Specifications:

19. "The nature of my invention consists in the adapta-
"tion of a reservoir to the fire grate for the reception
"of the carbonic oxide, and other unconsumed gases
"arising from the burning coal, which is so arranged
"that the gases in escaping therefrom must pass
"through the fire at a point where it is most fully
"ignited, and thus be entirely consumed.

"In all other stoves and grates with which I am ac-
"quainted they are either to pass off unconsumed
"through the smoke flues, or into the apartment,
"while in mine they are all economized and ignited
"as they pass through the fire."

Again, "D is the reservoir, which is made to serve the
"double purpose of a reservoir of the unconsumed
"gases and also of a magazine or receptacle for the
"fuel."

Again, "With regard to coal stoves and furnaces, it is
"obvious that my invention may be carried out in a
"variety of ways, all essentially the same in princi-
"ple, but the above described construction and mod-
"ification are those which I prefer."

Claim. "I do not limit myself to the precise arrange-
"ment of parts described above, what I claim and
"desire to secure by letters patent is the exterior
"stove cylinder A, the reservoir D, and the fire-pot
"C, or their equivalents, arranged and operating in
"the manner substantially as herein set forth, for
"the purpose of economizing and burning the gases

"generated during the combustion of anthracite and "other coals."

Record, Bill, pp. 6, 7, fols. 16–19.

20. Littlefield became indebted to Wm. B. Treadwell and John S. Perry, of Albany, N. Y., the original assignees of the contract which forms the basis of these proceedings, in the sum of about $1,500, and was unable to pay.

Record, Bill, p. 7, fol. 19.
Record, Perry, p. 199, fol. 467.
Record, Perry, pp. 219, 220, fol. 510.
Record, Perry, p. 231, fol. 526.

21. Having thus improved upon the stove of 1851, and filed his application for a patent for such improvements, and having procured to be made a stove embodying such improvements, he approached Treadwell & Perry for aid to introduce them to the public. He visited Albany about the first of April, 1853, bringing with him one of these improved stoves which he exhibited to that firm, and upon which the agreement of April 5, 1853 was formed.

Record, Bill, pp. 7, 8, fol. 19.
Record, Perry, pp. 199, 201, 233, fols. 467, 484, 527.
Record, Littlefield, p. 501, 838, fols 909, 1733.

22. Littlefield admits in his last amended answer that he visited Albany for the purpose of making arrangements for the manufacture of this stove, which resulted in the agreement set forth in complainant's bill.

Record, Littlefield, p. 161, fol. 349.

23. At the time of making the agreement, Littlefield stated that he had made an application for a patent for this stove.

Record, Bill, p. 8, fol. 20.
Record, Perry, p. 199, fol. 467.
Record, J. G. Treadwell, p. 403, fol. 771.

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Record, Bill, pp. 6, 7, fols. 16–19.

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Record, Bill, pp. 7, 8, fol. 19.
Record, Perry, pp. 199, 201, 233, fols. 467, 484, 527.
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Record, Littlefield, p. 161, fol. 349.

23. At the time of making the agreement, Littlefield stated that he had made an application for a patent for this stove.

Record, Bill, p. 8, fol. 20.
Record, Perry, p. 199, fol. 467.
Record, J. G. Treadwell, p. 403, fol. 771.

24. 3644. Q. "Was the application of a covered reservoir "to a vertical fire-grate original with you?"

A. "It was supposed to be, and I now suppose "that I was the first to cover over a fire-pot having "vertical openings through its sides for the purpose of "compelling the gaseous and more inflammable ele- "ments of the coal to burn out or to pass out through "the poorly-ignited fire at the sides of the fire-pot "containing such vertical openings, and which is "clearly shown and described as the purpose of my "supposed invention in the application of 1852."

Record, Littlefield, p. 959, fol. 2072.

25. The agreement of April 5, 1853, recited that he had "made application to the patent office at Washing- "ton for letters patent, securing to him a certain im- "provement in the invention so as aforesaid patented "by him, and said application is now pending."

Record, Bill, p. 8, fol. 20.

26. The stove shown to Treadwell & Perry, April, 1853, was in strict accordance with the drawings attached to application of December 30, 1852.

Record, Perry, p. 199, fol. 467.
" J. G. Treadwell, p. 403, fol. 771.

27. The stove of December 30, 1852, is an improvement of the stove of 1851, and a legitimate outgrowth from it.

Record, J. G. Treadwell, p. 404, fol. 771.

28. This stove was marked patented 1851.

Record, J. G. Treadwell, p. 404, fol. 771.
" Perry, p. 199, fol. 468.

29. Application for patent withdrawn July 22, 1853.

Record, Perry, p. 203, fol. 487.

30. "Having some time since written a note explanatory "of the principles of Littlefield's patent stove (the "stove of 1849). I wish still further to say that

"within the last few weeks he has perfected that "stove, etc."

Record, Hooke, p. 497, fol. 903.

31. This stove is the same in principle as Lowell Gas Burner, Brilliant, etc.

Record, W. B. Treadwell, p. 315, fol. 645.
" Perry, p. 1,056 fol. 3,366.

32. Littlefield exhibited this stove to Treadwell & Perry, and on this the agreement of April 5, 1853, was made.

Record, Perry, pp. 199, 201, fols. 467, 484.
" Littlefield, p. 501, fol. 909.

33. It was mutually agreed that the stoves made under the assignment should be improved in proportions.

Record, Perry, p. 202, fol. 485.
" J. G. Treadwell, p. 404, fol. 772.

(*a.*) This stove of 1852 was Littlefield's second invention, and an improvement on the stove of 1851.

(*b.*) He made application for a patent December 30, 1852, which was pending at the time the agreement and transfer of April 5, 1853, was made.

(*c.*) It was rejected by reason of the claim being too broad.

(*d.*) Littlefield was largely indebted to Treadwell & Perry in 1852.

(*e.*) This stove was taken from Lowell, Mass., to Albany by Littlefield, in April, 1853, and exhibited to Treadwell & Perry and the agreement of April, 1853, was formed.

(*f.*) It was agreed that patterns of improved style and proportions should be constructed.

(*g.*) The stoves constructed from these improved patterns were the same in principle as the stove of 1852.

34. The application of December 30, 1852, was rejected May 30, 1853, and withdrawn from the office July 22, 1853, and on the same day a new application was filed by Littlefield for a stove corresponding with the one which had been constructed by him for Treadwell & Perry.

Record, Bill, p. 12, fol. 26.
Record, Littlefield, pp. 47, 48, fols. 110 to 112.
Record, Perry, p. 203, fol 487.

35. This application was patented January 24, 1854.

Record, Bill, pp. 12 to 16, fols. 27 to 34.
Record, Perry, p. 203, fol. 487.

36. This stove constructed on the same principle as the stove of 1852.

Record, J G. Treadwell, p. 404, fol. 472.
Record, Messenger, p. 395, fol. 759.
Record, W. B. Treadwell, p. 315, fol. 645.
Record, Perry, pp. 203, 487, fols. 1056, 3366.

37. The agreement of April 5, 1853, for the manufacture of stoves.

Record, Bill, pp. 8 to 11, fols. 20 to 26.

38. The agreement of April 5, 1853, recited that Littlefield had "made application to the patent office at Wash-"ington for letters patent, securing to him a certain "improvement in the invention so as aforesaid pa-"tented by him, and said application is now pen-"ding."

Record, Bill, p. 8, fol. 20.

39. In 1853, when Littlefield induced Treadwell & Perry to undertake the manufacture of stoves, under his patent, and introduce them to public favor, Tread-

well & Perry were stove manufacturers of established reputation, and conceded pecuniary ability. Littlefield had no personal or commercial standing, and had no pecuniary ability. He owed debts which he was unable to pay, and among them one to Treadwell & Perry of about $1,500.

Record, Bill, p. 7, fol. 19.

40. At this time Littlefield had but a single patent, to wit: that of April 15th, 1851, under which no stoves were manufactured for market. The invention covered by this patent Littlefield regarded simply as "a germ from which a more valuable construction "was to arise."

Record, Perry, p. 204, fol. 488.
Record, Littlefield, p. 450, fol. 835.

41. The patterns furnished by Littlefield to Treadwell & Perry, under agreement of April 5, 1853, were constructed on the same principle as the stove of December 30, 1852, and were a *fac simile* of the drawings attached to patent of January 24, 1854.

Record, Perry, pp. 202, 203, fols. 485, 487.
Record, W. B. Treadwell, p. 313, fol. 643.
Record, Dickey, p. 344, fol. 687.
Record, Gibbs, p. 399, fol. 765.
Record, J. G. Treadwell, p. 404, fol. 772.

42. Littlefield always held that this stove was made under the assignment.

Record, Perry, p. 204, fol. 487.

43. Treadwell & Perry are authorized to manufacture these stoves.

Record, Littlefield, p. 417, fol. 790.

44. In 1853 four sizes of the stoves were manufactured by Treadwell & Perry, from patterns got up by Littlefield and as before stated they proved a failure.

Record, Littlefield, p. 871, fol. 1824.

45. The agreement of September 10, 1853, for the manufacture of furnaces.

Record, pp. 1074 to 1076, fols. 3411 to 3416.
Record, Perry, p. 304, fol. 631.
Record, J. G. Treadwell, p. 407, fol. 776.

46. Littlefield assigned to Treadwell & Perry the right to make hot air furnaces under his patents September 10, 1853. They were unsuccessful.

Record, Perry, p. 206, fol. 491.
Record, Perry, pp. 256 to 258, fols. 561 to 564.
Record, W. B. Treadwell, p. 313, fol. 643.

Patent of January 24, 1854.

From the specifications:

"To effect this simultaneous combustion of the waste "gases with the carbon of the coals, is the object of my "invention, which consists in the employment of a cylin- "drical grated fire-pot, with no solid or imperforated sides, "against which the partially consumed coal can rest and "cool, which cylindrical grate is surmounted by a reservoir, "for the reception of the gases which arise from the burn- "ing of the fresh coal. * * * The entire freedom from "clinkers is believed to be due to the fact, that the hottest "part of the fire is upon the exterior, all around the grate; "as this is a point where the gases are burned, and not as "in all other stoves with which I am acquainted, in the "centre."

Record, Bill, pp. 13, 14, fol. 29, 30.

Claim. "The cylindrical grated fire-pot E, in combina- "tion with the gas receptacle F, constructed and operated "in the manner substantially as described, by which I am "able to burn the gaseous and more inflammable elements of "the coal, in immediate contact with its more refractory "portions, and thus insure a complete combustion of them "both.

Record, Bill, p. 16, fol. 34.

Letters Patent 10,448, January 24, 1844. Re-issue No. 132, November 19, 1861.

From the specifications:

"To effect this combustion of the waste gases with the "carbon of the coals, as well as the complete consumption "of the refractory portions of the coal at the base of the "stove instead of at the top, * * * is the object of "my invention, * * * to-wit: That the highly heated "gases which are thrown off from the incandescent coal on "the fire grate at the base of the stove, as well as from the "heated coal in the supply chamber are caused to be burned "laterally below and outside the coal supply chamber, and "entirely down to the grate, and after having spent them-"selves, circulate over the top of the coal supply chamber."

Record, Bill, p. 21, fol. 43.

Claim. "An organization which temporarily confines "the gases of the supply coal in a coal supply chamber, "then burns the gases of the supply coal and the gases of "the incandescent coal laterally below, and outside of the "coal supply chamber, and entirely down to the grate, and "thereafter circulates the spent gases, or a portion of them, "over the top of the coal supply chamber, and between it "and the outer wall of the stove, and finally discharges "them through a flue leading outside the room in which "the stove is situated."

Record, Bill, p. 23, fol. 47.

Letters Patent No. 10,448 — January 24, 1854. Reissue No. 133—Nov. 19, 1861.

From the specifications:

"In stoves as heretofore constructed the heat accumulates "in the center of the fire, while at the sides where it comes "in contact with the surface of the fire-pot, the coals are "cooled so rapidly that they are soon extinguished, and the "consequence is a great amount of cinders, which renders "it necessary frequently to clean out the stove and start the "fire afresh." * * *

"My invention also has for its object the use of an illu-"minated exterior wall of the stove in connection with an

"open sided fire chamber and an intermediate gas consum-
"ing chamber."

Record, Bill, p. 25, fols. 50, 51.

Claims:

"*First.* The vertical wedge shape passages between the
"grate bars of the fire-pot, substantially as described."

"*Second.* The employment of a grated fire-pot, forming
"a downward continuation of a coal supply pot in combi-
"nation with a gas consuming chamber or flue between the
"outer case and the connected fire and coal supply pot, and
"an externally discharging spent gas pipe, substantially as
"and for the purpose set forth."

"*Third.* I claim an illuminated exterior wall M in com-
"bination with a coal supply chamber, and an intermediate
"gas consuming chamber substantially as described."

Record, Bill, p. 27, fol. 54.

Letters Patent No. 10,448 — Dated Jan. 24, 1854. Reissue No. 133 — Whole No. 1,232 — Dated Nov. 19, 1861. Reissue No. 1,332 — Dated Aug. 26, 1862.

From the specifications:

"The nature of my invention consists in the employment
"of an illuminated exterior wall or cylinder of any stove, in
"connection with any opening or openings through the
"sides of the fire cylinder of the fire chamber or fire-pot,
"and an intermediate space or chamber wherein gas is con-
"sumed, etc."

Record, Bill, p. 102, fol. 229.

Claim — "The illuminated exterior wall or cylinder M,
"with openings F, therein, glazed with isinglass or any
"transparent substance, or any equivalent therefor, in com-
"bination with a coal-supply chamber and an intermediate
"chamber G, wherein gas is consumed, at or around the fire-
"pot, or any appendage thereof."

Record, Bill, p. 103, fol. 230.

"Letters Patent 10,448 — Dated Jan. 24, 1854. Re-
"issue No. 133 — Whole No. 1,237 — Dated Nov. 19, 1861.
"Re-issue No. 1,333 — Dated Aug. 26, 1862."

From the specifications:

"The nature of my invention consists in the employment "of a grated fire-pot with no solid or imperforated sides, "against which the partially consumed coals can rest and "cool, which fire-pot is surmounted by a reservoir for the "reception of the gases arising from the burning coal."

Record, Bill, p. 104, fol. 231.

Claim. "The employment of a fire-pot having a vertical "fire grate around the same, forming a downward continua- "tion of a coal-supply pot, in combination with a gas-con- "suming chamber between the outer case and the connected "fire and coal-supply pot."

Record, Bill, p. 105, fol. 233.

"Letters Patent No. 10,448, dated Jan. 24, 1854. Whole "No. 1,236. Re-issue No. 132, dated Nov. 19, 1861. Again "re-issued No. 1,334, dated Aug. 26, 1862."

From the specifications:

"My invention is of a two-fold nature. First, causing a "combustion of the gases from the supply coal and the "gases from the incandescent coal to take place at the ex- "terior surface near the base, so as to aid in the combustion "of the solid unconsumed coals at that point; and second, "so adapting the supplying reservoir and the flue surround- "ing it to the fire-pot, as to entirely prevent any air passing "into said reservoir when the stove is in action, except at "the base."

Record, Bill, p. 105, fol. 234.

Claim. "An organization which will permit the gases of "the supply coal, and the gases of the incandescent coal to "burn laterally below, and outside of the coal-supply "chamber, and entirely down to the grate, and thereafter "circulate the spent gases, or a portion of them, over the "top of the coal-supply chamber; and finally discharge "them through a flue leading outside the room in which the "stove is situated."

Record, Bill, p. 106, fol. 237.

Letters patent, No. 10,448, Jan. 24, 1854. Reissue, No.

132, dated Nov. 19, 1861. Again re-issued, No. 1,335, Aug. 26, 1862.

From the specifications:

"The nature of my invention consists in the arrange-"ment of fire-pot, coal supply and gas consuming chamber, "within an outer cylinder, which shall admit of the circu-"lation of heat, or the heated gases around and over the "top of the same, thereby giving a large surface for reflec-"tion of heat into the room where the stove is used, and "prevents any air from entering the coal supply cylinder "at the top, whereby the same is rendered safe and "effectual."

Record, Bill, p. 107, fol. 238.

Claim:

"The combination of the fire-pot E, with the coal supply "cylinder F, immersed within the outer cylinder M, which "forms chambers G and G', substantially as and for the "purpose herein described."

Record, Bill, p. 108, fol. 239.

"Letters Patent No. 10,448, Jan. 24, 1854; Reissues "Nov. 19, 1861; and Aug. 26, 1862; No. 1,426, March 3, "1863.

From the specifications:

"My improvements have reference to three parts of the "stove. First, an effectual adaptation of the supplying "cylinder to avoid explosion and permit a more perfect "regulation of the stove's action.

"Second, the construction of an illuminated exterior "case to the heating chamber; and

"Third, a peculiar construction of the fire-pot, making it "more effective in use, and less expensive to manufacture."

"In the Joyce stove the exterior case enclosed only the "sides more or less of the supplying cylinder and the fire-"pot, whereas, with my improvements it also extends up "and surrounds the top as well as the sides of the supplying "cylinder. The advantage of this construction is, that no "air can pass into said cylinder at the top when the stove is in operation. * * *

"It is unsafe so to construct a supplying cylinder having

"the opening for the supply of coal communicate directly "with the external atmosphere, as such a construction not "only prevents the successful operation of the stove in "respect to the amount of coal ignited, but is liable at times "when the coal supplied is wet, or of poor quality so as to "generate hydrogen gases to cause explosions.

Record, Bill, p. 110, fol. 242, 243.

"I am aware that Joyce in his invention has described a "small stove for heating book-binders tools. * * * But "that stove does not reach either in conception or actual "construction the realization of my improvement. * * * "The extracts (from Joyces specifications) show that the "arts by that device were not advanced beyond the construc- "tion of a small furnace to be fired up when out of its case, "and to be placed therein for the specific purpose of apply- "ing a more gentle heat to the tools of book binders and "other trades, and of conveying the products of combustion "to the chimney flue." * * * *

"Such a construction of the fire-pot would render a stove "or furnace ineffectual if not inoperative. * * * *

"A stove or furnace permanently connected as an indi- "vidual whole for the general purpose of supplying artifi- "cial heat to apartments, and combining the improvements "which constitute the important features of my invention, "was not produced thereby, and could not be produced "therefrom without the exercise of invention in every par- "ticular of my improvement."

"Therefore, while I entirely disclaim the whole construc- "tion described in the said stove of Joyce, operating in the "manner and for the purpose set forth by him, yet I do "claim, to their full extent, the features of my improve- "ment, which I have described and exemplified in the fore- "going specifications, andthe substance and scope of which "I shall now set forth in my claim."

Record, Bill, pp. 113, 114, fols. 248 to 251.

Claims. "What I claim as my invention and desire to "secure by letters patent is a stove or furnace, having a "supplying cylinder, or reservoir over the fire-pot, and a

"chamber for receiving the products of combustion arranged "so as to inclose the cover-opening of the supplying cylin- "der, when the fire-pot is constructed with openings or out- "let space to said chamber, sufficient in area to enable an- "thracite coal and other concentrated fuels to be burned "and to transmit all the products of combustion and gene- "rated gases freely to said chamber."

"I also claim the combination of a chamber for receiving "the products of combustion, so arranged as to inclose the "cover-opening of the coal-supplying cylinder, with a fire- "pot which has an aggregate area of openings or outlet "space to said chamber exceeding that of the air-supply "apertures through the fire grate below."

Record, Bill, p. 114, fol. 251.

"Letters Patent No. 10,448, Jan. 24, 1854; Re-issues "Nov. 19, 1861, and Aug. 26, 1862; No. 1,427, March 3, "1863."

From the specifications:

"In the aforesaid stove of Joyce, the exterior case inclosed "only the sides more or less of the supplying-cylinder, and "the fire-pot; whereas, with my improvement it also extends "up and surrounds the top as well as the sides of the sup- "plying-cylinder, the advantage of which construction is "that no air can pass into said cylinder at the top when the "stove is in operation; but whatever air enters in at the "cover-opening through the outer casing, will necessarily "pass immediately to the exit-flue, that being the vacuous "space.

"In the stove with which I have compared my im- "proved stove the fire-pot was perforated, to permit the "flame to pass through in a chamber surrounding it, so that "the unconsumed gases might be ignited in contact with the "burning coals, but those perforations were so remote from "the grate at the bottom, that the partially consumed coals "at that point were liable to become cool, and finally extin- "guished, whereas with my improved construction, having "the perforations extend perpendicularly from near the grate "upward as high as it is desirable to ignite the coal, the "gases from the supply coal, and also from the incandescent

"coal, are burned in conjunction *and entirely down to the* "*bottom*, thereby aiding in the combustion of the refractory "and partially consumed coal at that point. The form of "the perforations, though not absolutely essential, is im- "portant. It not only facilitates the manufacture as here- "after explained, but adds to the successful operation of the "stove, inasmuch as the flame of the burning gases is thereby "brought lower than would be the case if the perforations were widest, or were of the same width at the top."

Record, Bill, pp. 116, 117, fols. 255 to 257.

Claims. "An illuminating exterior case having its win- "dows, or illuminating apertures, either in its fixed portion "or in any door, or movable part thereof, in combination "with a supplying cylinder for reserve coal, and a chamber "which receives the products of combustion from the fire- "pot.

"I also claim a fire-pot having its combustion apertures "extending down to the bottom of the casting and the in- "termediate bars tapering from top to bottom, substantially "as, and for the purpose herein specified."

Record, Bill, p. 119, fol. 260.

"Letters Patent, No. 10,448, January 24, 1854; Reissues "November 19, 1861, and August 26, 1862; No. 1,478, "May, 19, 1863.

From the specifications:

"My improvements have reference to three parts of the "stove: First, an effectual adaptation of the supplying "cylinder, to avoid explosions, and permit a more perfect "regulation of the stove's operation; second, the construct- "ion of an illuminating exterior case to the heating chamber "that the stove may give light to the apartment, and heat "by a direct radiation from the fire itself as well as by con- "duction from its surfaces; and, third, a peculiar con- "struction of the fire-pot making it more effective in use, "and less expensive to manufacture. In the aforesaid stove "of Joyce, the exterior case inclosed only the sides, more "or less of the supplying-cylinder and the fire-pot, whereas "with my improvements it also extends up and surrounds

"the top as well as the sides of the supplying-cylinder, the "advantage of which construction is that no air can pass "into said cylinder at the top when the stove is in opera- "tion, but whatever air enters in at the cover opening "through the outer casing, will necessarily pass immediately "to the exit-flue, that being the vacuous space.

"Neither in the stove of Joyce nor in any stove with which "I am acquainted, employing a supplying-cylinder for the "reserve fuel, and a space or chamber into which the pro- "ducts of combustion and the light and heat from the "burning fuel are caused to pass, has there been constructed "an illuminating exterior case or wall to such space or "chamber, thereby permitting the stove to give light to the "apartment, and heat by radiation from the fire itself as "well as by conduction from the stove's surfaces. The ad- "vantage of such construction is of a three fold nature: "First, it exposes to view the condition of the fire, whether "or not it is operating in a proper manner; second, it per- "mits the fire to burn at a higher temperature, without "injury to the interior construction, because more heat "passing by direct radiation, less is retained to act upon "those surfaces; and, third, a better quality of heat is "furnished, it being well known that radiant heat, direct "from the fire itself, imparts a warmth and cheerfulness that "cannot be experienced from a heating surface where there "is no light, or the cause of such heat is not perceptible to "the eye.

"To effect the two first-named purposes is to remedy "positive defects; but the last-named purposes may be re- "garded as improvements.

"All however, if effected, are useful and desirable."

Record, Bill, pp. 126, 127, fols. 273 to 275.

Claim. "The combination of the fire-pot E, having ver- "tical openings *C C*, with the supplying-cylinder F, when "the same are immersed within the outer cylinder M, which "forms the chamber G and G, substantially as and for the "purpose herein described."

Record, Bill, p. 129, fol. 279.

"Letters Patent No. 10,448, January 24, 1854; Reissues "November 19, 1861, and August 26, 1862; No. 1,479, "May 19, 1863.

Claim. "Combining with a supplying-cylinder for reserve "coal a fire-pot having vertical openings *C C*, extending "up from near the grate to the closed sides or portions of "the same, as high as it is desirable to ignite the coal, sub- "stantially as for the purpose described."

Record Bill, p. 124, fol. 270.

"Letters Patent, No. 10,448, Jan. 24, 1854. Re-issued "Nov. 19, 1861; Aug. 26, 1862; March 3, 1863, and Nov. "18, 1864, No. 1,813.

From the specifications:

"The stove as a complete individual thing should be so "organized as to contain within itself all the elements neces- "sary to its successful operation, which is the final object of "my invention. Heretofore, inventors in this class of "stoves have confined their efforts to the fire-pot flues and "radiating surfaces, assuming that the supplying-cylinder "or magazine, was not susceptible of improvement. As a "natural result of such efforts, stoves employing a supply- "ing-cylinder for reserve fuel, heretofore constructed and "used for warming the air in buildings, have contained the "one radical defect here pointed out, and which my inven- "tion as described, entirely obviates.

Record, p. 133, fol. 288.

Claim:

"The combination of a fuel-supplying cylinder with a "fire-pot, when the said supplying cylinder has its cover- "opening inclosed within a chamber or space communicat- "ing not only with the outlet from the fire-pot, but also "with the exit flue substantially as herein described, when "the case forming said inclosing chamber becomes a part "of the stove itself, and is so constructed, united and com- "bined with other parts of the stove, as to form a com- "plete manufactured article, or a structure having vitality "as a complete individual thing, for the combustion of an- "thracite and other concentrated fuel, substantially in the "manner, and for the purposes herein specified.

Record Bill, p. 134, fol, 290.

"Letters Patent, No. 10,448, Jan. 24, 1854. Re-issued "Nov. 19, 1861; Aug. 26, 1862; March 3, 1863, and Nov. "18, 1864, No. 1,814.

Claim:

"I do not broadly claim the intent to make an opening "in the exterior case of a stove through which the opera- "tion of the fire may be seen; but what I do claim as my "invention, and desire to secure by letters patent, is the "arrangement, adaptation and combination with a fuel- "supplying cylinder stove, of an illuminating case to the "chamber which receives light and the gaseous products "of combustion from the burning fuel, when said case is "illuminated by windows or glazed apertures arranged "continuously upon every side, or in so much of its sur- "face as may be fully exposed to view, substantially in "the manner and for the purpose herein set forth.

Record, Bill, p. 136, fol. 294.

"Letters Patent, No. 10,448, Jan. 24, 1854. Re-issued "Nov. 19, 1861; Aug. 26, 1862; May 19, 1863; and Nov. "8, 1864, No. 1,815.

From the specifications:

"The fire-pot, which forms the subject of this application, "is constructed with openings C (more or less in number), "around its entire circumference, about one-half its diam- "eter in height, and extending from as near the part O as "practicable upwards, and made narrower at the top than "at the bottom, as the draught will be strongest through "the broader part of the opening; the effect of this form is "to draw the point of active combustion lower down and "cause the hottest part of the fire to be at the base of the "incandescent fuel, whereas, were the openings shorter or "higher up, or of an equal width, the tendency would be "to force active combustion higher up, and consequently "consume fuel proportionally faster. The form of the out- "let from the fire-pot, though not absolutely essential, is "important, as it adds to the successful operation of the "stove, inasmuch as the highly heated products of combus- "tion are thereby brought lower than would be the case "were the outlet apertures of an equal width, or widest at

"the top, as before described. The aggregate outlet space "from the fire-pot to the chamber receiving the gaseous "products of combustion, should be sufficiently large to "allow such free passage therefrom to said chamber as will "avoid any tendency of a passage upward through the re- "serve fuel, and to insure such proper working of the fire- "pot or place where the fuel is consumed, the aggregate "amount of outlet space from the fire-pot to the chamber "receiving the gaseous products of combustion therefrom, "should be greater than the aggregate amount of opening "for the passage of air through the fire grate or to the in- "candescent fuel."

Record, Bill, p. 138, fol. 297.

Claims. "First, a fire-pot constructed substantially as "described, in combination with a fuel-supplying cylinder, "having its cover opening surrounded by a chamber which "communicates with the outlet from the fire-pot, and also "with the flue leading to the chimney, when the openings "in the fire-pot or outlets therefrom are broadest at the "bottom, as and for the purposes specified.

"Second, the combination of a fire-pot constructed sub- "stantially as described, with a fuel-supplying cylinder, "which has its cover opening surrounded by a chamber "which communicates with the outlet from the fire-pot, and "also with the flue leading to the chimney, when the aggre- "gate amount of outlet space from the fire-pot exceeds the "amount of inlet, as and for the purpose specified."

Record, Bill, p. 138, fol. 298.

Letters Patent, No. 10,448, January 24, 1854. Re-issued November 19, 1861; August 26, 1862; May 19, 1863, and November 22, 1864, No. 1,823.

From the specifications:

"My invention relates to an improvement in stoves which "are supplied with an excess of fuel, and the excess or reserve "fuel fed to the fire as fast as consumption takes place, and "for which I have applied for letters patent in even date "herewith, and my invention consists in the adaption of a "swinging cover to the top of the stove so as to permit "said cover to be swung open on a horizontal plane without

"falling off, when necessary to supply fresh coal or to cool "the stove."

Record, Bill, p. 140, fol. 300.

Claim. "Having thus fully described my invention, I do "not broadly claim hinging a cover to the top plate of a "stove, but what I do claim as my invention, and desire to "secure by letters patent is, the arrangement, adaptation and "combination with a fuel-supplying stove, of a cover so "hinged to the top plate of the stove, that it may be swung "open on a horizontal plane, substantially in the manner "and for the purpose specified."

Record, Bill, p. 140, fol. 301.

47. Littlefield says that "the patent of January 24, 1854, "was the base of his operations, and from which all "his subseqent improvements have proceeded."

Record, Littlefield, pp. 519, 531, 537, fols. 931, 947, 955.

48. The claim, as patented January 24, 1854, was for the same elements as applied for December, 1852; it was granted, as that combination had not been anticipated by others.

49. It was mutually agreed that the stoves made under the assignment should be improved in proportions.

Perry, p. 202, fol. 485.
J. G. Treadwell, p. 404, fol. 772.

50. Patterns were furnished by Littlefield, and Treadwell & Perry immediately proceeded to manufacture stoves, upon the principle of that described in the specification filed December 30, 1852, and exactly in accordance with the drawings attached to the patent of January 24, 1854.

Record, Bill, p. 16, fol. 39.
Record, Littlefield, pp. 451, 452, fols. 838, 839.
Record, Perry, p. 202, fol. 485.
Record, Gibbs, p. 399, fol. 765.

Record, J. G. Treadwell, p. 404, fol. 772.
Record, Littlefield, p. 871, fol. 1824.
Record, W. B. Treadwell, p. 334, fol. 673.

51. Littlefield marked these patterns, patented 1851, improved 1853.

Record, Perry, p. 202, fol. 485.
Record, Perry, p. 291, fols. 611, 612.
Record, Gibbs, p. 399, fol. 765.
Record, J. G. Treadwell, p. 406, fol. 775.

52. Treadwell & Perry proceeded with all due diligence to manufacture the stoves.

Record, Bill, p. 11, fol. 26.
Record, Perry, p. 205, fol. 489.
Record, Dickey, pp. 345, 715, fols. 688, 1405.
Record, W. B. Treadwell, pp. 312, 314, fols. 642, 645.
Record, Littlefield, p. 871, fol. 1824.
Record, J. G. Treadwell, pp. 407, 410, fols. 775, 780.

53. It was a part of Littlefield's duty to examine these stoves daily, as they were manufactured, and if imperfections existed, to remedy them.

Record, W. B. Treadwell, pp. 312, 337, fols. 642, 677.
Record, J. G. Treadwell, p. 405, fol. 773.
Record, Perry, p. 202, fol. 486.

54. Littlefield admits that the stoves sold in 1853 from patterns got up by him, were worthless.

Record, Littlefield, p. 165, fol. 355.

55. The stoves were condemned owing to defects due to Littlefield's mistakes in constructing the patterns.

Record, Perry, pp. 202, 243, fols. 485, 543.

Record, W. B. Treadwell, p. 312, fol. 641.
Record, J. G. Treadwell, p. 405, fol. 773.
Record, Dickey, p. 715, fol. 1404.
Record, Bill, p. 17, fol. 35.

56. Littlefield was employed to travel and remedy the defects in this stove and make sales.

Record, Perry, p. 203, 206, fols. 486, 491.
Record, W. B. Treadwell, p. 312, fol. 642.
Record, Messenger, p. 394, fol. 757.
Record, J. G. Treadwell, p. 405 fol. 773.
Record Bill, p. 16, fols. 34, 35.
Record Bill, pp. 419, 420, fols. 794, 795.

57. The defect in the construction of these patterns were remedied by Littlefield in 1854, but at the cost and charge of Treadwell & Perry.

Record, Bill p. 17, fol. 35.
Record, Perry, p. 204, 1064, fols. 488, 3384.
Record, W. B. Treadwell, p. 312, fol. 642.
Record, Gibbs, p. 400, fol. 766.
Record, Littlefield, p. 452, 453, fols. 840 to 842.
Record, Dickey, p. 715, fol. 1404.

58. Littlefield says: "This firm have no right to manu-"facture or sell these stoves, except in the States of "New York and Connecticut, therefore those that "purchase them with a view to sell in other States, "must pay me $2.00 on each stove for the right to "do so."

Record, Littlefield, p. 454, fol. 844.

59. Again.—

"ALBANY, *December* 28, 1858.

"Messrs. W. & J. TREADWELL, PERRY & NORTON:

"*Gentlemen:* Your favor of the 25th was not re-"ceived until this morning. Since I spoke to Mr.

"Easterly about the coal-burner, I have seen the "stove as you are now manufacturing them, and do "not know as I can suggest any improvement to the "present pattern, except to advise that the sliding "doors and draft-slide should fit more perfectly. It "is very important that the supply of air to the "combustion-chamber should be perfectly controlled "by the draft-slide, so that its action can be controlled "without a damper in the pipe.

"I shall have five more patents on devices adapted "to 'base-burning or horizontal-draft stoves,' and "should I reconstruct the stove made after the pat- "ent of 1854, I should use some of them; and if, by "so doing, I should make a much better stove, a "premium of fifty cents would not (in equity) be a "proper consideration. Were it not for important "negotiations at present pending, I should be pleased "to call and show you the plan I should adopt. I "may do so at some future time.

"Yours, &c.,

(Signed) D. G. LITTLEFIELD."

Record, Littlefield, p. 413, fol. 784.

60. During the year 1854, Treadwell & Perry, under the direction of Littlefield, altered the patterns of the stove of 1853, correcting, as was supposed, the mistakes originally made in them. This stove was made under the patent of 1854, with the knowledge and by direction of Littlefield and every effort was made to dispose of them during the years 1854, 1855, 1856, and 1857, and but very few were in fact disposed of, despite all the combined efforts of Littlefield and Treadwell & Perry, by whom a supply was then kept constantly on hand for sale. This was mainly due to the prejudice against the stove contracted when first offered to the public in 1853, under the defective construction inaugurated by Littlefield.

61. During all these disastrous years, the effort to bring the Littlefield stove into market, was persisted in by

Treadwell & Perry, by resort to the usual methods of advertising and otherwise until some faint hopes of success began to be observed, and then, for the first time, Littlefield set out to repudiate his contract with Treadwell & Perry, and to reap the reward of all the labor and expense they had incurred, in giving to the Littlefield stoves a pecuniary value in the public market, and then arose the present controversy.

Record, Perry, pp. 204, 205, fols. 488 to 490.

62. For several years, thereafter, Littlefield was employed by Treadwell & Perry, to superintend the manufacture of new patterns for stoves, remedy the defects in the old ones, to travel through the country where stoves had been sold, ascertain the real difficulties, and generally to use every effort to commend the Littlefield stoves to the favor of the public. This effort was attended with very considerable expense to Treadwell & Perry, and with indifferent success. So that by the use of all reasonable effort to give the Littlefield stove popularity, it proved a disastrous pecuniary failure, and the early disfavor by which the stove was received, was mainly due to the ignorance and blunders of Littlefield himself.

63. Treadwell & Perry, and their successors, always fulfilled the contract.

Record, Perry, pp. 205, 206, 211, fols. 490, 491, 499.
Record, Dickey, p. 345, fol. 689.
Record, W. B. Treadwell, pp. 314, 397, fols. 645, 762.
Record, J. G. Treadwell, p. 408, fol. 777.

64. Littlefield never gave Treadwell & Perry "notice" that they were not fulfilling their agreement.

Record, Perry, p. 388, fol. 749.
Record, Messenger, p. 396, fol. 760.

Record, Gibbs, p. 401, fol. 768.
Record, J. G. Treadwell, p. 408, fol. 777.

65. There was never any agreement that the assignment should cease to be valid.

Record, Perry, p. 207, fol. 493.
Record, Dickey, p. 392, fol. 754.
Record, Messenger, p. 395, fol. 758.
Record, W. B. Treadwell, p. 397, fol. 762.
Record, J. G. Treadwell, p. 408, fol. 777.

66. The premiums on the stoves were credited yearly to Littlefield's account, and the sales stated in a book that was always open to his inspection.

Record, Perry, pp. 247, 248, 805, fols. 549, 632.
Record, Dickey, p. 346, fol. 690.
Record, J. G. Treadwell, pp. 408, 410, fols. 778, 780.

(*a.*) The stove patented January 24, 1854, was constructed on the same principle as the stove of Dec. 30, 1852, and a legitimate outgrowth of the stove of April 15, 1851.

(*b.*) The agreement and assignment was made April 5, 1853, as applied to stoves.

(*c.*) The agreement and assignment was made Sept. 10, 1853, as applied to furnaces.

(*d.*) Littlefield furnished the patterns for the stoves to Treadwell & Perry, which were at first unsuccessful by reason of the mistakes of the former.

(*e.*) Littlefield states that the patent of January 24, 1854, was the base of his subsequent improvements.

(*f.*) Treadwell & Perry proceeded with due diligence under the agreements, and always fulfilled their part of same.

(*g.*) Littlefield was employed by them to perfect the patterns, to remedy defects, and to make sales.

(*h.*) Littlefield admits the rights of Treadwell & Perry as late as 1858.

(*i.*) Littlefield never gave them the required "notice."

(*j.*) Treadwell & Perry credited the royalties due on the stoves yearly, but paid him no money as he was in their debt.

LITTLEFIELD COAL BURNER.

67. The stove improved from the Lowell Gas Burner, under the direction of Littlefield, and known as the Littlefield Coal Burner, manufactured by Treadwell & Perry and successors.

Patented January 24, 1854.

68. These improved patterns, made under Littlefield's directions, 1854.

Record, Perry, p. 204, fol. 488.
" W. B. Treadwell, p. 312, fol. 642.
Record, Messenger, p. 394, fol. 757.
" Gibbs, p. 400, fol. 765.
" J. G. Treadwell, p. 405, fol. 774.
Record, Dickey, p. 715, fol. 1404.

69. He admits that in 1854 and 1855 he requested Treadwell & Perry to manufacture this stove.

Record, Littlefield, p. 165, fol. 357.

70. I do not know that I can suggest any improvement to this pattern.

Record, Littlefield, p. 413, fol. 784.

71. Littlefield marked these patterns "patented, 1851 and 1853."

Record, Perry, p. 291, fol. 612.

72. This stove constructed on the same principle as the stove of 1852.

Record, Messenger, p. 395, fol. 759.
" W. B. Treadwell, p. 315, fol. 645.
" Perry, p. 1056, fol. 3366.

73. Treadwell & Perry made all efforts to make this stove popular.

Record, Messenger, p. 394, fol. 758.
" p. 454, fol. 843.
" W. B. Treadwell, p. 312, fol. 642.
" Perry, p. 205, fol. 489.
" Dickey, p. 345, fol. 688.

74. Littlefield employed by Treadwell & Perry and successors from 1853 to 1855 to travel to make sales of these stoves.

Record, pp. 419, 420, fols. 794, 795.
" Perry, pp. 203, 206, fols. 486, 491.
" W. B. Treadwell, p. 312, fol. 642.

75. Littlefield says: "This firm have no right to manufacture or sell these stoves, *except* in the States of "New York and Connecticut, therefore those that "purchase them with a view to sell in other States, "must pay me $2.00 on each stove for the right to "do so."

Record, p. 454, fol 844.

76. Littlefield never objected to the manufacture and sale of the stoves under the agreement and transfer.

Record, Perry, p. 208, fol. 494.
" Gibbs, p. 399, fol. 765.
" J. G. Treadwell, p. 407, fol. 777.
" William B. Treadwell, p. 314, fol. 644.

77. Sales of these stoves reduced by the manufacture of defendant's stoves and by the published warnings of Littlefield.

Record, Dickey, p. 346, fol. 690.
" J. G. Treadwell, p. 406, fol, 774.

Record, p. 423, fol. 800.
" Littlefield, pp. 423 to 426. fols. 802 to 804.
" Dickey, p. 715, fol. 1405.

78. An example of the same:

"ALBANY, *Oct.* 10, 1861.

"Messrs. COFFIN & Co.:

"GENTS — If T. & P. have a right to my 1854 patent, "and use it (a fact which they admit), the party selling the "stove is liable to a fine of $100, if that date is not on the "stove, and they having 1851 patented on the stove, and "the stove is not covered by that patent, make you liable "to two $100. I only throw these facts in that you may "know what a nice predicament T. & P. have placed you "in. If I was anxious to bring a suit I should commence "on you, as they have placed you in my power. I speak "advisedly when I inform you that I can bring three suits "and maintain them.

"You had better see me at once, and if I fail to satisfy "you what is here written is not strictly correct, I will "waive all claim.

"Respectfully,

"(Signed) D. G. LITTLEFIELD."

Record, Littlefield, p. 423, fol. 801.

79. The record discloses the fact, and there is no conflict in the evidence, that from 1853 to 1862, Treadwell & Perry, and those succeeding to their rights under the contract of April 5th, 1853, incurred large expense, and were diligent in the effort to make the manufacture and sale of stoves under the Littlefield patent profitable not only to themselves but also to Littlefield. In this they did not succeed, and pecuniary disasters resulted,

80. Treadwell & Perry and their successors, at all times, fulfilled their part of the agreement.

Record, Bill, p. 17, fols. 36, 37.
" Bill, pp. 28, 29, fols. 56, 57.

Record, Perry, pp. 205, 211, 1065, fols. 490, 498, 3387.
" W. B. Treadwell, pp. 312, 314, 397, fols. 642, 645 762.
" Dickey, pp. 345, 645, 715, fols. 689, 1219, 1405.
" Rand, p. 372, fol. 726.
" Messenger, p. 394, fol. 758.
" J. G. Treadwell, pp. 408, 410, fols. 777, 780.

81. The sales of these stoves were small for a few years, owing to the failure of those of 1853, and the warnings to the public by Littlefield.

Record, Perry, p. 206, fol. 491.
" " p. 210, fol. 496.
" Dickey, p. 346, fol. 690.

82. Littlefield writes to Treadwell & Perry, March 6, 1857, and asks "if they have sold the 1,500 stoves embraced in his patent."

Record, Littlefield, p. 743, fol. 2027.

83. Again he says: "Previous to the construction of "stove of 1856, it had been demonstrated by the "operation of those stoves constructed under my "patents of 1851 and 1854, that anthracite coal, after "being once ignited, was susceptible of being burned "for any length of time, etc., etc."

Record, Littlefield, p. 456, fol. 846.

84. Again: "At the time my former pamphlet was writ- "ten, owing to certain influences not requiring an "explanation here, I had not only abandoned the "construction of a certain stove, but had come to "the conclusion that the patent of January 24, 1854, "was of no value, whereas I now understand that "patent to be the base of my operations, from "whence all my subsequent improvements have been "proceeding."

Record, Littlefield, p. 537, fol. 955.

85. His testimony on this point is as follows;

Q. "What patent did you refer to in the letters of March "6, and June 23, 1857?

A. "I could not state definitely that I referred to any "particular patent; my impression is that these let- "ters, all of them, were controlled in that respect "somewhat by our custom of speaking; the words "'my patent' might have been exchanged for the "words, 'my stove.'

Record, Littlefield, p. 945, fol. 2032.

Again:

Q. "Are you prepared to state positively that in the two "letters named, March 6, and June 23, that you did "not refer in the expression embracing "my patent,' "to any particular patent which had been granted to "you for improvements in stoves?

A. "I am certain that in writing that letter, and when "using the term, 'my patent,' that I did not have in "mind any particular patent, but as to that I am not "positive; I may have referred to the patent of 1854, "or I may have referred to the patent of 1851; at "all events, it seems to me I did not mention any "particular patent, but whether I had a motive in "thus making such an omission, I cannot now state."

Record, Littlefield, p. 947, fol. 2038.

86. He says, in relation to stove made from patterns furnished in 1853, which he patented 1854, and called the stove of 1854: "The stove shown in the above cuts "was made by Treadwell & Perry, of Albany, N. Y. "It was introduced to the trade through their circu- "lar of that season, by the publication of a letter "written by me. It was not claimed to be perfect, "but so far perfected as to justify its introduction to "market. That season its practical operation was "unsatisfactory, to account for which I am free to "to say all parties, myself included, were at fault. "* * * I was willing to make such an arrange- "ment, as it required more money to develop my "improvements than I could command. I was to

"give them the benefit of all subsequent improve-
"ments and protect them against infringements."

Record, Littlefield, p. 451, fol. 838.

(*a.*) This was the stove of 1853, as improved by Littlefield in 1854, after the failure of the stove as first constructed by him.

(*b.*) As late as 1858 he writes that he cannot suggest any improvements.

(*c.*) This stove was based upon the same principles as the stove of 1852.

(*d.*) Treadwell & Perry and their successors made all efforts to increase the sale, and employed Littlefield to travel for that end.

(*e.*) Littlefield admits their rights under the agreement, and never objected to their proceedings.

(*f.*) He warned the public against buying Treadwell & Perry's stoves.

(*g.*) Treadwell & Perry's rights recognized in 1857.

(*h.*) Littlefield says in 1863 that the patent of January 24, 1854, was the base of his operations and from which all his subsequent improvements proceeded.

(*i.*) Littlefield's quibbling testimony as to the meaning of his inquiry "have you sold the 1,500 stoves embraced in my patent?"

THE BRILLIANT.

87. The stove known as the Brilliant, manufactured by Treadwell & Perry and successors, patented January 24, 1854.

88. New patterns were constructed by Treadwell & Perry in 1854 under the direction of Littlefield, embodying the same devices, which were also unsuccessful.

Record, Bill, p. 17, fol. 35.
Record, Littlefield p 49, fol. 113.
Record, Perry, p. 204, fol. 488.
Record, Perry, p. 205, fol. 490
Record, W. B. Treadwell, p. 312, fol. 642.
Record, Messenger, p. 394, fol. 758.
Record, Gibbs, p. 400, fol. 766.
Record, J. G. Treadwell, p. 406, fol. 775.

89. This stove was constructed on the same principle as the stove of 1852.

Record, Messenger, p. 395, fol. 759.
Record, Perry, p. 205, fol. 490.

90. In June, 1853, Littlefield thus writes of the stove, for which application for a patent was made July, 1853, and as patented January 24, 1854:

"The result is truly beautiful. A cheerful, blaz-
"ing fire, shines through the windows which ex-
"tend entirely round the external cylinder. The
"evaporating dish can be dispensed with, as the
"inconveniences which call for it in other stoves are
"obviated.

"This stove can be safely warranted to give entire
"satisfaction. It can be used in sick rooms or by
"those most sensitive to the bad effects of coal
"burning.

"D. G. LITTLEFIELD,
"*Inventor and Patentee, Lowell, Mass.*"

"Messrs. Treadwell and Perry are authorized to
"manufacture these stoves.

"D. G. L.

"LOWELL, *June* 23, 1853."

Record, Littlefield, p. 417, fol. 790.

Again to Treadwell & Perry:

"The new theory cannot be got over. I mean "the method of burning the gases at the bottom, "thereby producing a perfect combustion of the "fixed matter, or, in other words, preventing the "collection of old coal on the grate. I have no "doubt that a large quantity of coal has been con- "demned as slate, which in this stove would burn to "ashes, simply because the gases are burned at the "bottom in contact with it. You will, of course, "write a short introductory, and call the attention "of the reader to the article. If you think it of too "much length to publish in your circular, we must "put it in pamphlet form.

"I wish to have the article published over my "name as the inventor, that the stove may be known "as Littlefield's patent.

"Yours, D. G. LITTLEFIELD."

Record, Littlefield, p. 418, fol. 791.

91. Littlefield marked these paterns "patented April 15, 1851, and January 24, 1854."

Record, Perry, p. 205, fol. 490.

92. Littlefield admits that he desired and requested Treadwell & Perry to manufacture this stove in accordance with terms of agreement of April 5, 1853.

Record, Littlefield, p. 165, fol. 356.

93. In the fall of 1854, and in 1855, Littlefield traveled for Treadwell & Perry under written instructions (fols. 794, 795, 796).

Record, pp. 419, 420.

Record, Perry, pp. 203, 206, fols. 486, 491.

Record, W. B. Treadwell, p. 312, fol. 642.

94. The royalties due upon the stoves and furnaces were credited yearly to Littlefield's account.

Record, Perry, pp. 207, 208, fol. 493.

Record, Perry, pp. 298, 299, fols. 621, 622.
Record, Perry, pp. 1064, 1069, fols. 3384, 3395.
Record, Dickey, pp. 1046, 1050, fols. 3336, 3347.

95. No premiums have been paid because of Littlefield's indebtedness to the firm.

Perry, p. 208, fol. 493.

96. Littlefield never complained that Treadwell & Perry did not fulfill their contract, or give notice to terminate it.

Record, Perry, p. 207, fol. 492.
Record, Dickey, pp. 345, 391, fols. 689, 755.
Record, Perry, p. 388, fol. 749.
Record, Messenger, p. 396, fol. 761.
Record, Gibbs, p. 401, fol. 768.
Record, J. G. Treadwell, pp. 407, 408, fol. 777.

97. Littlefield approved of the doings of Treadwell & Perry and their successors, as shown by his acts.

Record, Perry, p. 207, fol. 492.

As late, certainly, as December, 1858, Littlefield recognized the fact that Treadwell & Perry were then making and vending the Littlefield stove under their contract with him, and suggested at that time some alterations in the stove to be put on the market that year.

Record, Littlefield, p. 413, fol. 784.

98. He says: "During the fall of 1854 but few of these stoves were sold, which agreed with my expectations."

Record, Littlefield, p. 453, fol. 842.

99. Treadwell & Perry and their successors were injured by reason of warnings given to their customers by

Littlefield against buying their stoves, and also by the introduction of the Morning Glory stove.

Record, Perry, p. 210, fol. 496.
Record, W. B. Treadwell, p. 314, fol. 644.
Record, Dickey, pp. 346, 646, fols. 690, 1220, 1221.
Record, J. G. Treadwell, p. 406, fol. 774.
Record, J. G. Treadwell, p. 409, fol. 779.
Record, Dickey, pp. 710, 711, 715, fols. 1391, 1394, 1395, 1405.

Two examples of the character of these warnings:

100. "*October* 3, 1861.

"Treadwells & Perry, agents, having issued a cir-
"cular that might, unnoticed, intimidate and cause
"the trade in the States of New York and Con-
"necticut to hesitate in making arrangements for the
"sale of 'The Morning Glory,' in justice to myself
"I provide an antidote for the poison which that
"circular seems intended to distribute throughout
"these two States.

"By the equivocal manner in which they allude
"to my pamphlets, a portion of the public, not being
"familiar with the facts, would infer that I commend
"the stoves which they offer for sale; when the facts
"are that any person who will read the Morning
"Glory pamphlet would not purchase those stoves at
"any price.

"That their circular is a tissue of deception, I pro-
"pose to show by publishing it verbatim, and placing
"opposite each paragraph the truth."

Record, Littlefield, p. 423, fol. 802.

Again:

101. "Albany, *October* 3, 1861.

"My pamphlet of 1860 exposed those old stoves
"and cautioned the public against being deceived in

"purchasing them. The Morning Glory pamphlet "does the same in a more pointed manner.

"It is true that several pages in my pamphlets "were devoted to those stoves; but only for the "purpose of showing the injustice of the attempt to "sell that stove on the reputation attained by my "new and improved patterns.

"There is no question as to the truth of this para- "graph."

Record, Littlefield, p. 424, fol. 803.

Again: 1861.

102. "After this 'expose,' I shall most assuredly hold "dealers for infringement who purchase the stoves "offered by them.

"So far as to the perfection of manufacture, this "paragraph is totally false; to countenance its sale "would only put money in their pockets at the ex- "pense of the reputation of my justly celebrated "stoves.

"D. G. LITTLEFIELD,
"*Albany, N. Y.*"

Record, Littlefield, p. 426, fol. 804.

103. Treadwell & Perry met these published warnings of Littlefield with notices, of which the following is an example:

1861.

"Mr. Littlefield has recently introduced a stove called the "'Morning Glory.' It is identical in principle with our "stove, and substantially the same in fact, with a few unim- "portant changes. We hope that Mr. Littlefield will not, "in violation of his agreement, attempt to manufacture or "sell that stove in the States of New York and Connecticut. "But in order to caution the public, we take this opportu- "nity of giving notice that we have the sole and exclusive "right to the use of the original patent, as granted to Mr. "Littlefield, April 15, 1851, as provided in the contract 'with him, and to all patents granted to him since that date

"for improvements on the same, or extensions of the same, "including the one of June 25, 1861, for and within the "States aforesaid."

* * * * * *

"We shall hold all persons liable for damages who may "manufacture, sell or use, the stove called the 'Morning "Glory,' or any other stove that is constructed on substan- "tially the same principles, within the aforesaid States, un- "less the same shall be purchased of us or of our authorized "agents."

"The Littlefield Coal-Burner now sold by us, is the per- "fection of a stove for parlors, nurseries and lodging rooms. "It is particularly adapted for rooms used for the sick."

"TREADWELLS & PERRY,

"*Agents*, 478 *Broadway, Albany, N. Y.*"

Record, p. 426, fol. 804.

104. In relation to this stove, Littlefield says in 1860: "The reader must not understand me as intimating "a violation of good faith, as I am free to say the "whole difficulty arose from the fact that we could "not think alike."

Record, p. 453, fol. 842.

105. About the years 1859, 1860 and 1861, these stoves began to be regarded with public favor and a growing demand for them was apparent. Mr. Perry, as the representative and agent of the owner of the rights granted by Littlefield to Treadwell & Perry, made all the requisite provisions for supplying the demand and the prospect appeared hopeful that some indemnity would be afforded for the prior years of pecuniary outlay and disaster.

106. In 1861 Littlefield proposes to Treadwell & Perry to cancel the agreement and transfer of April 5, 1853, and to substitute another, viz.:

"125. Q. Did Littlefield call on you about the month of "January, 1861, relative to the manufacture and sale of "these stoves under the contract of April 5, 1853, and what "did he say on the subject?

"A. He called at my office and stated that he was dissatis-
"fied with his arrangements with Messrs. E. Corning & Co.;
"that he intended to abandon the 'Railway' and crowd the
"'Parlor Furnace,' as he had the sole rights to the latter.
"He stated that he had invented some improvements to the
"'Littlefield Coal-Burner," which would make it more sale-
"able; that he did not think that fifty cents premium was
"a just consideration for such a stove; that he ought to be
"paid $3 premium on each; that the public would pay the
"difference, and we should make just as much money. He
"said that he would prefer to have his stoves all made at
"one place, and that we had better consent to annul the
"present contract and make one that was more equitable to
"him. He said that he would not be satisfied with any
"arrangement that netted him less than $10,000 per year.
"126. Q. Did you accede to his proposal?
"A. I did not."

Record, Perry, p. 209, fol. 495.

107. Immediately upon this refusal the active hostility of Littlefield was made manifest, and having become associated with a person of pecuniary ability (his co-defendant Jagger), the controversy thus inaugurated, is after the lapse of many years presented to this court in its present form for final adjudication.

a. The Brilliant was the new and improved stove made by Treadwell & Perry, under the directions of Littlefield in 1855, which was unsuccessful.

b. Littlefield never complained of the doings of Treadwell & Perry, or gave any "notice," but by his acts showed his approval.

c. By reason of the previous failure of the stove, he anticipated but small sales.

d. Treadwell & Perry were injured by the "warnings" given to the public by Littlefield.

e. Littlefield as late as 1860, disclaims any intimation of bad faith on the part of Treadwell & Perry.

f. In 1859, and the following years, the stove grew in favor for the sale of which Treadwell & Perry made adequate provision.

g. In 1861 Littlefield proposes to abolish the agreement and transfer of 1854, and to form a new one.

h. This being declined, he at once began to defy Treadwell & Perry and to infringe their rights.

THE MORNING GLORY No. 1.

108. The Morning Glory No. 1, manufactured by the defendants. Patented Jan. 24, 1854, and June 25th, 1861. No. 32,635.

From the specifications:

109. "In all stoves of this sort the fire-pot and bars form-
"ing the outlets have been made of iron, as I myself
"have used them in my stoves, as patented January,
"1854, and April, 1851. The manifest defect of their
"metalic material is the facility with which they are
"burned up by being enwrapt in flame, and the con-
"sequent expense of their replacement. My inven-
"tion is intended to remedy this evil, and the method
"of doing it is shown in Figures 2 and 3; Fig. 2 be-
"ing a perspective view of a fire-pot constructed on
"my improved plan; Fig. 3 a horizontal section of
"Fig. 2, in the line *a b* near the base of the grate-
"bars; similar letters in the figures referring to the
"same parts of the apparatus."

"I construct the grate bars for my base-burning fire-pot, "of an incombustible material, that with care will last for "a long time, outlasting many series of iron bars; thus fur-"nishing a much better and cheaper article for its intended "purpose than has ever been done before.

"Having thus fully described my invention, I do not "limit myself to the precise form shown in the drawing, as "my improved fire-pot constructed under any of the known "forms, will, in its action cause the burning gases and "highly-heated products of combustion on passing out-"ward between the bars of a perforated or grated fire-pot, "to completely envelop the bars, and soon cause them to "burn if made out of iron.

"CLAIM.

"What I claim and desire to secure by letters patent, is: "In the construction of base-burning stoves as arranged and "fitted substantially according to the specification in my

' letters patent of January 24, 1854, the combination of the "supplying-cylinder M, with rings and framing N, R, con- "structed as described in this specification, so as to admit "of the use, removal, and replacement of separate bars of "soap-stone, fire-clay, or analagous heat-resisting substances.

Record, p. 19, fols. 39, 40.

110. In 1861 Littlefield took out this patent for improvement on the patent of 1854 and commenced manufacturing and selling stoves made in accordance with the same, in the States of New York and Connecticut in defiance of the rights and of the protests and warnings of Treadwell & Perry.

Record, p. 17, fol.36.
Record, Perry, pp. 209, 388, fols. 496, 749.

111. The following letter to the defendant Jagger is an example of these protests — also, see references:

"ALBANY, *June 2d*, 1862.

"IRA JAGGER, Esq.:

"DEAR SIR — I notice that you have again become inter- "ested in the stove business, and I wish you every success. "There is room for all, and there is no man whom I would "rather see prosper than yourself. My experience has been "severe, but I hope for more prosperity in the future.

"I am really sorry that on your return to the business I "must enter a protest at the start, for I would much prefer "to have everything in future amicable between us. I "think it my duty, however, both to the owner and your- "self, to give you early notice of what, I doubt not, you "are entirely ignorant of, that the two stoves which Messrs. "Jagger & Littlefield advertise as 'Littlefield's improved "coal-burner,' and 'the Morning Glory,' also all improve- "ments on the same, cannot be made or sold within the "States of New York and Connecticut, except by consent "of the owner of the contract conveying the right of the "same to Treadwell & Perry, and dated April 5th, 1853.

"I have a history of the case, and all the documents re- "lating to it, which I shall be pleased to show you, unre-

"servedly, at any time you may do me the favor to call, "after the present week, as they are now away.

"I think, at any rate, before going further in the matter, "it would be well for you to examine them.

"Respectfully, "JOHN S. PERRY."

Record, p. 94, fols. 204, 205.
Record, pp. 801, 802, fols. 1638 to 1640.
Record, p. 803, fol. 1642.
Record, p. 890, fols. 1876, 1877.

In reply to the above letter Jagger declines the conference, and states to Mr. Perry that his mind is made up, and nothing that he can say or do will be likely to change it in the least.

112. Littlefield says: "In constructing this stove, it was "deemed advisable to put in practice the aforesaid "invention (Patent of June 25, 1861), to serve as the "fire pot or burning chamber. In other respects, "its peculiar construction was subsequently patented "on the 26th November, 1862. Besides being cov- "ered by these two patents (1861 and 1862), like "my other stoves and furnaces, it is subordinate to "the principal claims of the patent of January 24, "1854, as re-issued on the 3d day of March 1863."

Record, Littlefield, p. 519, fol. 931.

Again:

113. "'The Morning Glory' is made under patents of "1854 and 1861. It has no resemblance to the stove "of 1851. Neither does it infringe that patent, but "is constructed and operates upon a different princi- "ple. Therefore it is true, as they say that their stove is "identical in principle with the 'Morning Glory,' and "consequently the selling of their stoves is a violation "of my patent of 1854, to which they make no claim; "they stating for themselves that it is my patent of "April 15th, 1851, under which they operate. The "1851 patent will show for itself that the stoves they

"make have no resemblance to it, and are not covered "by it. If they have a right to the 1861 patent why "don't they use it? I think it requires no argument "to show that no responsible party would dare make "the assertion."

Record, Littlefield, p. 426, fol. 808.

114. Littlefield admits manufacturing stoves in 1862, covered by patents of January 24, 1854, and June 25, 1861.

Record, Littlefield, p. 172, fol. 369.

115. Jagger says, in answer to the third interrogatory, that he and said Dennis G. Littlefield have not made and vended, or caused to be made and vended within the States of New York and Connecticut, stoves of the character described in and covered by the said several letters patent above recited, *but only as patented January* 24, 1854, and employing the improved fire-pot, patented June 25, 1861.

Record, Jagger, p. 176, fol. 384.

116. Q. "What did you ever hear Littlefield say on the subject?"

A. "I heard him say he meant to make the Morning Glory the leading stove."

Record, Easterly, p. 599, fol. 1100.

117. This stove is constructed on the same principle as the Lowell Gas Burner, Brilliant, etc.

Record, Perry, pp. 210–211, fols. 496, 498.
Record, W. B. Treadwell, p. 315, fol. 646.
Record, Dickey, pp. 344–391, fols. 687, 754.
Record, Messenger, p. 395, fol. 759.
Record, Gibbs, p. 400, fol. 767.
Record, J. G. Treadwell, p. 409, fol. 779.
Record, Dickey, pp. 805–809, fols. 1647, 1656.

118. "The manufacture of these stoves reduced the sales "of Treadwell & Perry, for this class of stoves, more "than one-half."

Record, Perry, p. 209, fol. 496.
Record, Dickey, pp. 646–708, fols. 1220, 1391.

a. The specifications and claims of June 25, 1861, connect this stove with the patent of January 24, 1854.

b. Littlefield commenced making this stove in 1861, in defiance of the warnings of Treadwell & Perry.

c. The defendant Jagger associated himself with Littlefield in 1862, and continued the manufacture of these stoves, also in defiance of such warnings.

d. Littlefield admits that this stove is subordinate to the patent of January 24, 1854.

e. He admits manufacturing stoves in 1862 covered by this patent.

f. He gave out that he intended to make the Morning Glory the leading stove.

g. It is constructed on the same principle as the stove of January 24, 1854.

h. The manufacture and sale of these stoves reduced the sale of complainant's stoves more than one-half.

THE MORNING GLORY No. 2.

119. The Morning Glory No. 2, manufactured by the defendants. Patented December 9, 1862. No. 37,103.

120. From the specifications:

"In the class of stoves above specified, there are defects "and imperfections, which it is desirable to remedy.

"First. It is desirable to have the fire-grate so constructed "as to dispose of the slate and other incombustible sub- "stances which accumulate at the bottom of the fire-pot, "without tilting the grate to empty the same, since it is "better not to rekindle the fire immediately upon the grate, "in order to avoid destroying it by the direct action of the "burning fuel.

"Second. It is desirable to obtain more direct and en- "larged radiation from the coal that is in a state of ignition, "in order to increase the heating power of the stove; or, "in other words, to more completely utilize the heat pro- "duced by the combustion of the volatile, as well as the "fixed portions of the fuel.

"Third. To the same end, and that more heat may be "communicated through the surrounding case from the "chamber surrounding the fire pot, it is an object to devise "a better method of its receiving the radiation from the fire "and the fire-pot, and also of directing the products of com- "bustion to come more directly, and in a better condition "for imparting their heat while in contact with the same.

"Fourth. Stoves of this class, or any stove that employs "a supplying cylinder for the reserve fuel, generate and "retain within the supplying cylinder explosive mixtures, "more or less, according to the quality of the fuel, also "varying as to whether the coal is wet or dry, when sup- "plied to the said reservoir — so that when it is opened to "replenish with coal the sudden intermixture of this "highly inflammable gas with atmospheric air, which is "drawn in at the top of said cylinder by the action of the "draught through the lateral outlets of the fire-pot, and "up the outer chamber, a momentary explosion takes place,

"which, though not always dangerous, is quite annoying; "hence, any construction which will obviate such explosions, "must be considered an important attachment to this class "of stoves.

"To effect the last named purpose is to remedy a positive "defect; but the former purposes may be regarded as im- "proveinents. All, however, if effected, are useful and "desirable.

"The first object I effect by means of an improved grate, "which I denominate a 'mill-grate,' and which is constructed "substantially as follows:

Record, p. 142, fols. 304, 305.

Claims:

"What I claim as my invention and desire to secure by "letters patent is the 'mill-grate,' A B, constructed and "operating substantially as and for the purposes herein "specified.

"I also claim the construction of the fire-pot D, with out- "wardly projecting combustion mouths or outlets *d d*, "opening immediately into and in combination with the "chamber E, for the purposes herein specified.

"I also claim the form and arrangement of the case M, in "relation to and in combination with the fire-pot D, and "chamber E, substantially as and for the purposes herein set "forth.

"I also claim compelling the draught to pass upward "through the supplying cylinder H, while kindling the fire "in the stove, and immediately previous to as well as during "the act of replenishing the cylinder with coal for the pur- "poses specified, and this irrespective of the special con- "struction by which the same is effected.

"I also claim the central chamber above the supplying "cylinder H, communicating with the exit-flue *p*, whereby "any air that passes into said chamber by the cover R, is conveyed to the exit-flue as specified.

"I also claim the divided flue K, around the chamber I, "and forming a communication between the front of the "chamber E and the exit-flue *p*, whereby the products of "combustion are conveyed to the chimney without inter- "fering with the action of the said chamber, and the radia-

"tion of heat from the stove is properly distributed, as "herein set forth.

"I also claim the sliding-plate or valve N, so arranged "that it necessarily closes the opening *o* from the chamber "E, to the flue K, when the aperture *n* from the supply- "cylinder H, to the central chamber I is opened and vice "versa, whereby the draught is directed at pleasure either "up through the chamber E, or the supply-cylinder H, for "the purposes herein set forth.

Record, p. 146, fols. 311, 312.

121. Littlefield says: "This stove in every particular is in "accordance with the following specifications of the "patent of November 26, 1862, and varies from "Morning Glory No. 1, so far as to the fire-pot or "burning chamber only."

Record, Littlefield, pp. 526, 539, fols. 940, 956.

122. The Elements, patented January 24, 1854, are combined in this stove.

Record, Perry, pp. 307, 1067, fols. 634, 3390.
" W. B. Treadwell, pp. 336, 398, fols. 675, 763.
" Gibbs, p. 402, fol. 769.
" J. G. Treadwell, pp. 410, 411, fols. 781, 782.

123. This stove is an improvement on Morning Glory No. 1.

Record, Perry, p. 1066, fol. 3390.

124. This stove is constructed on the same principle as the Lowell Gas Burner, Brilliant, etc.:

Record, Perry, p. 211, fol. 498.
" W. B. Treadwell, p. 315, fol. 646.
" Dickey, p. 391, fol. 754.
" Messenger, p. 395, fol. 760.
" Gibbs, p. 401, fol. 767.
" J. G. Treadwell, p. 409, fol. 779.

125. Defendants admit employing in their stove some of the inventions above described:

Record, Jagger, p. 178, fol. 393.
" Littlefield, p. 183, fol. 409.

126. 1862. Q. Was the stove called the Morning Glory No. 2 successful, so far as it related to the fire-pot?
A. It was entirely so.
1863. Q. Was it a popular stove with the trade?
A. It was more so than the No. 1 pattern.

Record, Littlefield, p. 727, fol. 1434.

a. Littlefield says that this stove only varies from Morning Glory No. 1 in the construction of the fire-pot.

b. The Elements, patented January 24, 1854, are combined in this stove.

c. The defendants admit the infringement of patents of November 26, 1862, and August 18, 1863.

d. This stove was successful and popular.

e. Is an improvement on Morning Glory No. 1.

THE MORNING GLORY No. 3.

127. The Morning Glory No. 3, manufactured by the defendants. Patented August 18, 1863. Patent No. 39,582.

128.

The specifications:

"In the class of stoves under consideration there are defects and imperfections which it is desirable to remedy or improve.

"*First.* It is desirable to have the fire-pot or burning chamber so adapted to the other parts of the stove that the greatest intensity of, or most complete combustion may take place, and the maximum heat thereby produced be distributed as uniformly as possible to the heating surfaces of the stove, and especially to this end that more heat may be radiated to the lower part of the apartment to be warmed, it is an object of desire to devise a method by which the intensely heated surface of the fire-pot or burning chamber may communicate its heat to an enlarged surface surrounding it, and at the lower part of the stove, near the floor of said apartment, where there is usually a great deficiency of heat.

"*Second.* It is desirable to improve the construction of the supplying cylinder in its relation and adaptation to the new arrangement of the fire-pot or burning chamber in order to prevent the destruction of the former and to promote the desired operation of the latter.

"*Third.* It is desirable so to construct the stove, not only as to be complete as an individual whole, but that it may be readily separated into convenient parts or sections, for the purpose of repairs, or of replacing parts liable to be destroyed or injured by the action of the fire, and those sections be complete separately, to the extent that they may be handled and transported by themselves without disturbing the arrangement and position of their component parts.

"To effect the first named purpose is to remedy a positive "defect; but the latter named purposes may be regarded "as improvements on former constructions. All, however, "if effected, are useful, and to that extent valuable.

"The first general object of my invention I effect by so "forming and arranging the fire-pot or burning chamber as "to be suspended in, and to close at the top, a chamber in "the lower part or base of the stove, which chamber sur- "rounds the sides and bottom of said fire-pot, whereby the "heat radiated from the intensely heated surfaces of the "same is confined and transmitted through the case forming "said chamber, the said case being enlarged to the extent "required, so as to make this part of the stove, usually "nearly cold, thereby become an effective heating surface, "and most usefully applied, where stoves of this class, as "heretofore constructed, have been quite deficient.

"The second purpose of my invention, as named, is effected "by a peculiar isolated construction of the 'supplying cylin- "der,' as hereinafter specified.

"The third-named purpose is effected by the peculiar con- "struction and arrangement of the sections of the stove in "relation to the first and second general features of my in- "vention, as before enumerated.

"In the accompanying drawings, the base or bottom of the "stove is represented by A, and immediately above this is "chamber C, in which the fire-pot or burning chamber D "is suspended. The lower part B of this chamber may "serve for the ash-pit of the stove. The sides of this "chamber are formed by annular or cylindrical castings *a*, *b*, "of any desirable shape, connected with the base A, and "extending up to and terminating in a projecting ring or "rim *c*. This chamber is provided with doors *e e*, in which "are the draught registers *j j*. Through these doors also "may be introduced an ash-pan for the reception of the ashes "and cinders falling from the fire-pot."

Record, pp. 147, 148, fols. 314 to 316.

Claims:

"In stoves using a supplying cylinder for reserve coal, "and an external case surrounding the same, is the suspen-

"sion or arrangement of the fire-pot or burning chamber "C, at the base of the stove, entirely shut off or separated "from the chamber which receives the heat directly from "the burning fuel and the heated products of combustion, "so that said chamber C may separately receive the heat "radiated from the outer surfaces of the fire-pot, and trans- "mit it to the surrounding case, and from thence radiate it "near the floor to the apartment to be warmed, substan- "tially as herein described.

"In combination with the fire-pot, suspended or arranged "in a separate chamber at the base of the stove, I also claim "the suspension of the supplying cylinder in the combus- "tion and heat transmitting chamber G, above and separate "from the fire-pot, substantially as and for the purpose "herein set forth.

"I also claim the construction and arrangement of the "stove in such a manner that it not only may be a con- "nected individual whole, but may be readily separated "into sections (figs. 3 and 4), each complete in itself to the "extent described, when thus applied in relation to the sus- "pended fire-pot in a separate chamber at the base of the "stove, and to the separately suspended supplying cylinder, "substantially as and for the purpose herein set forth.

"I also claim suspending the detachable soap-stone or "fire-brick supporting cylinder or section L of the separ- "ately suspended supplying cylinder, by means of the eyes "*o o* and stirrups or hasps *p p*, or their equivalents, in "order that the said section may be detached from below "without the necessity of raising it through the supplying "cylinder itself, substantially as herein specified."

Record, p. 152, fols. 322, 324.

129. Letters patent, No. 39,582, Aug. 18, 1863. Reissue, No. 1594, Dec. 22, 1863.

From the specifications:

"In that class of stoves which employ a 'supplying cyl- "inder,' or reservoir for reserve fuel, there are defects and "imperfections which it is desirable to remedy.

"*First.* It is desirable to have the fire-pot so adapted to "other parts of the stove that the greatest intensity of, or "most complete, combustion may take place, and the maxi- "mum heat thereby produced be distributed as uniformly "as possible to the heating surfaces of the stoves; and "especially to this end, that more heat may be radiated to "the lower part of the apartment to be warmed, it is an "object of desire to devise a method by which the intensely "heated surface of the fire pot may communicate its heat "to an enlarged surface surrounding it, and at the lower "part of the stove near the floor of said apartment, where "there is usually a great deficiency of heat.

"*Second.* It is desirable to improve the construction of "the supplying cylinder in its relation and adaptation to "the fire-pot, in order to prevent the destruction of the "former, and to promote the desired operation of the latter.

"*Third.* It is desirable so to construct the stove, not "only as to be complete as an individual whole, but that it "may be readily separated into convenient parts or sections "for the purpose of repairs, or of replacing parts liable to "be destroyed or injured by the action of the fire, and "those sections be complete separately, to the extent that "they may be handled and transported by themselves "without disturbing the arrangement and position of their "component parts.

"The first general object of my invention I effect by so "forming and arranging the fire-pot as to be suspended in "and to close at the top a chamber in the lower part or base "of the stove, which chamber surrounds the sides and bot- "tom of said fire-pot, whereby the heat radiated from the "intensely-heated surfaces of the same is confined and trans- "mitted through the case forming said chamber; the said "case being enlarged to the extent required so as to make "this part of the stove usually nearly cold, thereby become "an effective heating-surface.

"The second purpose of my invention, as named, is effected "by a peculiar construction of the supplying-cylinder, as "hereinafter specified.

"The third-named purpose is effected by a peculiar con- "struction and arrangement of the section of the stove, in

"relation to the first and second general features of my in-
"vention, as before enumerated."

Record, pp. 153, 154, fols. 327, 328.

Claims:

"What I claim as my invention, and desire to secure by
"letters-patent in stoves that employ a 'supplying-cylinder'
"or reservoir for reserve coal, is the suspension or arrange-
"ment of the fire-pot in a chamber C at the base of the
"stove, entirely shut off or separated from the chamber
"which receives the heat directly from the burning fuel,
"and the heated products of combustion; so that said
"chamber C, may separately receive the heat radiated from
"the outer surfaces of the fire-pot and transmit it to the sur-
"rounding case, and from thence radiate it near the floor
"to the apartment to be warmed, substantially as herein
"specified.

"In combination with the fire-pot suspended or arranged
"in a separate chamber at the base of the stove, I also claim
"the suspension of the supplying-cylinder in the chamber
"G, above and separate from the fire-pot, substantially as
"and for the purpose herein set forth.

"I also claim the construction and arrangement of the
"stove in such a manner that it not only may be a connected
"whole, but may be readily separated into two sections
"(figs. 3 and 4), each complete in itself, to the extent de-
"scribed, when thus applied to the suspended fire-pot in a
"separate chamber at the base of the stove, and to the sepa-
"rate suspended supplying-cylinder, substantially as and for
"the purpose herein set forth.

"I also claim suspending the detachable soap-stone or fire-
"brick supporting-cylinder, or section L, of the separately-
"suspended supplying-cylinder, by means of the eyes *o o*
"and stirrups or hasps *p*, *p*, or their equivalents, substan-
"tially as herein specified."

Record, p. 157, fol. 334.

130. Littlefield says: "This stove, like Nos. 1 and 2,
"employs a portion of the structure embraced in the
"patent of November 26, 1862, and is also subordi-
"nate to the patent of January 24, 1854, as re-issued

"March 3, 1863, the variations from the two former "patterns of this stove being clearly pointed out in "the following specifications and claims, made patent "on the 11th day of August, 1863."

Record, Littlefield, p. 531, fol. 947.

131. Again he says: "This modification appears to be "quite a departure from the previous constructions, "though this is more apparent than real."

Record, Littlefield, p. 539, fol. 957.

132. Littlefield's views as to the character of his inventions:

"These four claims, together with the first, third, fourth, "fifth, sixth and seventh claims of the patent of December "9th, 1862, are employed in constructing the 'Morning "Glory,' No. 3.

"Such is the character of my improvements applicable to "the base-burning and horizontal stove; and it is by virtue "of the patent law that these 'claims' are supposed to be "my property — inclosed therein by their various specifica- "tions as a hedge to protect them; and the justice and "equity of that same law provide a way by which these "claims can be more securely fortified should necessity re- "quire it.

"The object of this pamphlet is already explained; and "it has been my intention, in preparing this matter for "publication, to treat the subject with fairness, having it "understood that stoves burning from the whole periphery "of the fire-pot, and employing a supplying-cylinder for "reserve coal, did not originate with my inventions.

"The terms 'base-burning' and 'horizontal draught' "did originate with my improved stoves, being used for the "first time in describing 'the points of difference' be- "tween the 'railway coal-burner' and the 'Nott stove.'

"Either of those terms would be improperly applied, if "to a stove that did not operate according to the organiza- "tion developed by my improvements; and should a com- "petitor make use of those terms, the public would be

"justified in considering such competing stove an infringe-
"ment upon my improvements, or that those terms were
"used with a deceptive intention.

"The field for improvement is large, and is always open
"to all who desire to enter therein. My improvements,
"the result of considerable study and labor, are herein ex-
"posed to the public; and I cannot do less than humbly
"request competitors to show a proper respect for my rights
"in the premises."

Record, p. 543, fols. 961, 962.

133. The elements patented January 24, 1854, are combined in this stove.

Record, Perry, pp. 307, 1067, fols. 634, 3390.
" W. B. Treadwell, pp. 336, 398, fol. 6[illegible]5, 763.
" Gibbs, p. 402, fol. 769.
" J. G. Treadwell, p. 411, fol. 782.

134. This stove is constructed on the same principle as the "Lowell Gas Burner," "Brilliant," etc.

Record, Perry, p. 211, fol. 498.
" W. B. Treadwell, p. 315, fol. 646.
" Dickey, p. 392, fol. 755.
" Messenger, p. 396, fol. 760.
" Gibbs, p. 401, fol. 767.
" J. G. Treadwell, p. 409, fol. 779.

135. I think these stoves are far superior to the common kind.

Record, Dickey, p. 346, fol. 689.

136. I consider them improvements upon the stoves of 1851 and 1854.

Record, Dickey, p. 346, fol. 690.

137. Defendants admit the manufacture and sale of stoves patented January 24, 1854; re-issued August 26, 1862, Nos. 1332, 1333, 1334, 1335.

Record, p. 35, fol. 77.
Record, p. 65, fol. 138.

138. Defendants admit the manufacture and sale of stoves containing some of the inventions described in the bill.

Record, Littlefield, pp. 85, 172, 184, fols. 178, 179, 369, 410, 411.
Record, Jagger, pp. 93, 176, 179, fols. 203, 384, 396.

139. Jagger & Littlefield were repeatedly warned, by the agent of Mrs. Perry, not to infringe the agreement.

Record, Bill, p. 30, fol. 59.
Record, Perry, p. 36, fol. 78.
Record, Perry, pp. 210, 388, fols. 496, 749.

140. I think we have been able to obtain a better price for Morning Glory's, than for promiscuous patterns.

Record, Littlefield, p. 690, fol. 1490.

141. "There was a larger amount of money made on the "Morning Glory stoves than on all the rest of our "business."

Record, Jagger, p. 721, fol. 1418.

142. "We aimed to get between 30 and 40 per cent "profit on these stoves."

Jagger, p. 592, fol. 1082.

143. I consider the right to make the Morning Glory stove valuable, etc.

Record, Littlefield, p. 689, fol. 1337.

a. Littlefield says this stove is subordinate to the patent of January 24, 1854.

b. Again, he says, the difference between Morning Glory No. 3 and his former construction, is more apparent than real.

c. The elements patented January 24, 1854, are combined in this stove.

d. This stove is far superior to the common kind.

e. It is an improvement upon the stoves of 1851 and 1854.

f. Defendants admit the manufacture and sale of stoves embodying our inventions.

g. Defendants were repeatedly warned by Treadwell & Perry,

h. The Morning Glories have commanded a better price than common stoves.

i. Defendants aimed to get thirty or forty per cent profit.

j The right to make this stove is valuable.

144. The patents that were in existence at the date of closing the proofs were as follows, viz.:

No. 32,635. June 25, 1861.

Claim:

"In the construction of base burning stoves, as arranged "and fitted substantially according to the specification in "my letters patent of January 24, 1854, the combination "of the supplying cylinder M, with rings and framing, N, "R, constructed as described in this specification, so as to "admit of the use, removal and replacement of separate "bars of soap-stone, fire-clay or analogous heat-resisting "substances."

Record, p. 19, fol. 40.

145. No. 37,103. December 9, 1863, ante-dated November 26, 1863.

Claims:

"The 'mill-grate,' A, B, constructed and operating sub- "stantially as and for the purposes herein specified.

"I also claim the construction of the fire-pot D, with "outwardly projecting combustion mouths or outlets *d*, *d*, "opening immediately into and in combination with the "chamber E, for the purpose herein specified.

"I also claim the form and arrangement of the case M, "in relation to and in combination with the fire-pot D, and "chamber E, substantially as and for the purpose herein "set forth.

"I also claim compelling the draft to pass upward through "the supplying cylinder H while kindling the fire in the "stove, and immediately previous to, as well as during the "act of replenishing the cylinder with coal for the purpose "specified, and this irrespective of the special construction "by which the same is effected.

"I also claim the central chamber above the supplying "cylinder H, communicating with the exit flue *p*, whereby "any air that passes into said chamber by the cover R, is "conveyed to the exit-flue, as specified.

"I also claim the divided flue K, around the chamber I, "and forming a communication between the front of the

"chamber E, and the exit-flue *p*, whereby the products of "combustion are conveyed to the chimney without inter- "fering with the action of the said chamber, and the radi- "ation of heat from the stove is properly distributed, as "herein set forth.

"I also claim the sliding plate or valve N, so arranged "that it necessarily closes the opening *o* from the chamber "E, to the flue K, when the aperture *n* from the supply "cylinder H, to the central chamber I, is opened, and *vice* "*versa*, whereby the draft is directed at pleasure either up "through the chamber E, or the supply cylinder H, for the "purposes herein set forth."

Record, p. 146, fols. 311, 312.

146. No. 1594. Dec. 22, 1863. Re-issue of August 18, 1863.

Claims. "In stoves that employ a supplying cylinder or "reservoir for reserve coal, is the suspension or arrange- "ment of the fire-pot in a chamber C, at the base of the "stove, entirely shut off or separated from the chamber "which receives the heat directly from the burning fuel "and the heated products of combustion, so that said cham- "ber C, may separately receive the heat radiated from the "outer surfaces of the fire-pot, and transmit it to the sur- "rounding case, and from thence radiate it near the floor "to the apartment to be warmed, substantially as herein "specified."

"In combination with the fire-pot, suspended or arranged "in a separate chamber at the base of the stove, I also "claim the suspension of the supplying cylinder in the "chamber G, above and separate from the fire-pot, substan- "tially as and for the purpose herein set forth."

"I also claim the construction and arrangement of the "stove in such a manner that it not only may be a con- "nected whole, but may be readily separated into two sec- "tions (figs. 3 and 4) each complete in itself to the extent "described, when thus applied to the suspended fire pot in "a separate chamber at the base of the stove, and to the "separate suspended supplying cylinder, substantially as "and for the purpose herein set forth."

"I also claim suspending the detachable soapstone or "fire brick supporting cylinder, or section L, of the sepa- "rately suspended supplying cylinder, by means of the "eyes *o o*, and stirrups or hasps *p p*, or their equivalents, "substantially as herein specified."

Record, p. 157, fol. 334.

147. No. 1813. Nov. 8, 1864. Re-issue of January 24, 1854.

Claim:

"The combination of a fuel supplying cylinder with a "fire pot, when the said supplying cylinder has its cover "opening inclosed within a chamber or space communicat- "ing not only with the outlet from the fire-pot but also "with the exit flue, substantially as herein described, when "the case forming said inclosing chamber becomes a part "of the stove itself and is so constructed, united and com- "bined with other parts of the stove as to form a complete "manufactured article, or a structure having vitality as a "complete individual thing, for the combustion of anthra- "cite and other concentrated fuel, substantially in the man- "ner and for the purposes herein specified."

Record, p. 134, fol. 290.

148. No. 1814, November 8, 1864. Re-issue of January 24, 1854.

Claim:

"The arrangement, adaptation and combination with a "fuel-supplying cylinder stove, of an illuminating case to "the chamber which receives light and the gaseous products "of combustion from the burning fuel, when said case is "illuminated by windows or glazed apertures arranged "continuously upon every side, or in so much of its surface "as may be fully exposed to view, substantially in the man- "ner and for the purpose herein set forth."

Record, p. 136, fol. 294.

149. No. 1815, November 8, 1864. Re-issue of January 24, 1854.

Claims:

"*First.* A fire-pot constructed substantially as described,

"in combination with a fuel-supplying cylinder, having its "cover opening surrounded by a chamber which communi- "cates with the outlet from the fire-pot, and also with the "flue leading to the chimney, when the openings in the "fire-pot or outlets therefrom are broadest at the bottom, "as and for the purposes specified.

"*Second.* The combination of a fire-pot constructed sub- "stantially as described, with a fuel-supplying cylinder, "which has its cover opening surrounded by a chamber "which communicates with the outlet from the fire-pot, "and also with the flue leading to the chimney, when the "aggregate amount of outlet space from the fire-pot exceeds "the amount of inlet, as and for the purpose specified."

Record, p. 138, fols. 297, 298.

150. No. 1823, November 22, 1864. Re-issue of January 24, 1854.

Claim:

"The arrangement, adaptation and combination with a "fuel-supplying stove, of a cover so hinged to the top plate "of the stove that it may be swung open on a horizontal "plane, substantially in the manner and for the purposes "specified."

Record, pp. 140, 141, fol. 301.

The defendant Littlefield made numerous surrenders of his patents and re-issues, always without our consent.

The patented features embodied in the stoves made by the defendants are as follows, viz.:

IN MORNING GLORY No. 1.

A. "The cylindrical grated fire-pot E, in combination "with the gas receptacle F, constructed and operating in "the manner substantially as described, by which I am ena- "bled to burn the gaseous and more inflammable elements of "the coal in immediate contact with its more refractory por- "tions, and thus insure a complete combustion of them "both.

Record, p. 16, fol. 34.

B. "In the construction of base burning stoves as ar-
"ranged and fitted substantially according to the specifica-
"tion in my letters patent of January 24, 1854, the com-
"bination of the supplying cylinder M, with rings and
"framing, N, R, constructed as described in this specifica-
"tion, so as to admit of the use, removal and replacement
"of separate bars of soapstone, fire-clay or analogous heat
"resisting substances."

Record, p. 19, fol. 40.

C. "An organization which temporarily confines the gases
"of the supply coal in a coal-supply chamber, then burns
"the gases of the supply coal and the gases of the incande-
"scent coal laterally below and outside of the coal-supply
"chamber, and entirely down to the grate, and thereafter
"circulates the spent gases, or a portion of them, over the
"top of the coal-supply chamber, and between it and the
"outer wall of the stove, and finally discharges them
"through a flue leading outside the room in which the stove
"is situated.

Record, p. 23, fol. 47.

D. "The employment of a grated fire-pot, forming a
"downward continuation of a coal-supply pot in combina-
"tion with a gas consuming chamber or flue between the
"outer case and the connected fire and coal-supply pot, and
"an externally discharging spent gas pipe, substantially as
"and for the purpose set forth."

Record, p. 27, fol. 54.

E. "I claim an illuminated exterior wall M, in combina-
"tion with a coal-supply chamber, and an intermediate gas
"consuming chamber substantially as described."

Record, p. 27, fol. 54.

F. "The illuminated exterior wall or cylinder M, with
"openings F, therein, glazed with isinglass or any transpa-
"rent substance, or any equivalent therefor, in combination
"with a coal-supply chamber, and an intermediate chamber
"G, wherein gas is consumed, at or around the fire-pot, or any

"appendage thereof, substantially as, and for the purpose "herein described and set forth.

Record, p. 103, fol. 230.

G. "The employment of a fire-pot, having a vertical "fire-grate around the same, forming a downward continua- "tion of a coal-supply pot, in combination with a gas con- "suming chamber between the outer case and the connecting "fire and coal-supply pot, substantially as, and for the pur- "poses as herein described and set forth.

Record, p. 105, fol. 233.

H. "An organization which will permit the gases of the "supply coal, and the gases of the incandescent coal to "burn laterally below and outside of the coal-supply cham- "ber, and entirely down to the grate, and thereafter circu- "late the spent gases, or a portion of them, over the top of "the coal-supply chamber, and finally discharge them "through a flue leading outside the room in which the stove "is situated.

Record, p. 106, fol. 237.

I. "The combination of the fire-pot E, with the coal-supply "cylinder F, immersed within the outer cylinder M, which "forms the chambers G and G', substantially as, and for the "purpose herein described.

Record, p. 108, fol. 239.

J. "A stove or furnace, having a supplying cylinder, or res- "ervoir over the fire-pot, and a chamber for receiving the "products of combustion arranged so as to inclose the cover "opening of the supplying cylinder, when the fire-pot is con- "structed with openings or outlet space to said chamber, "sufficient in area to enable anthracite coal and other con- "centrated fuels to be burned, and to transmit all the pro- "ducts of combustion and generated gases freely to said "chamber.

Record, p. 114, fol. 252.

K. "I also claim the combination of a chamber for re-
"ceiving the products of combustion, so arranged as to
"inclose the cover openings of the coal supplying cylinder,
"with a fire-pot which has an aggregate area of openings,
"or outlet space to said chamber, exceeding that of the air
"supply apertures through the fire-grate below.

Record, p. 114, fol. 252.

L. "An illuminating exterior case, having its windows,
"or illuminating apertures, either in its fixed portion or in
"any door, or movable part thereof, in combination with a
"supplying cylinder for reserve coal, and a chamber which
"receives the products of combustion from the fire-pot.

Record p. 119, fol. 260.

M. "Combining with a supplying cylinder for reserve
"coal a fire-pot having vertical openings *C, C,* extending up
"from near the grate to the closed sides or portions of the
"same, as high as it is desirable to ignite the coal, substan-
"tially as for the purpose described.

Record, p. 124, fol. 270.

N. "The combination of the fire pot E, having vertical
"openings *C, C,* with the supplying cylinder F, when the
"same are immersed within the outer cylinder M, which
"forms the chamber G, and G, substantially as and for the
"purpose herein described.

Record, p. 129, fol. 279.

O. "The combination of a fuel-supplying cylinder with
"a fire pot when the said supplying cylinder has its cover
"opening inclosed within a chamber or space, communicat-
"ing not only with the outlet from the fire-pot, but also
"with the exit flue, substantially as herein described, when
"the case forming said inclosing chamber becomes a part of
"the stove itself, and is so constructed, united and com-
"bined with other parts of the stove as to form a complete
"manufactured article, or a structure having vitality as a
"complete individual thing for the combustion of anthracite
"and other concentrated fuel, substantially in the manner
"and for the purposes herein specified.

Record, p. 134, fol. 290.

P. "The arrangement, adaptation and combination with "a fuel-supplying cylinder stove, of an illuminating case to "the chamber which receives light and the gaseous pro- "ducts of combustion from the burning fuel, when said "case is illuminated by windows or glazed apertures ar- "ranged continuously upon every side, or in so much of its "surface as may be fully exposed to view, substantially in "the manner and for the purpose herein set forth.

Record p. 136, fol. 204.

Q. "The combination of a fire-pot constructed sub- "stantially as described, with a fuel-supplying cylinder, "which has its cover-opening surrounded by a chamber "which communicates with the outlet from the fire.pot, "and also with the flue leading to the chimney, when the "aggregate amount of outlet space from the fire pot ex- "ceeds the amount of inlet, as and for the purpose specified.

Record, pp. 138, 139, fol. 298.

R. "The arrangement, adaptation and combination with "a fuel-supplying stove, of a cover so hinged to the top "plate of the stove that it may be swung open on a horizontal "plane, substantially in the manner and for the purpose "specified."

Record, pp. 140, 141, fol. 301.

S. "The 'mill grate' A, B, constructed and operating "substantially as and for the purposes herein specified."

Record, p. 146, fol. 311.

T. "I also claim the form and arrangement of the case "M, in relation to and in combination with the fire-pot D, "and chamber E, substantially as and for the purpose herein "set forth."

Record, p. 146, fol. 311.

In Morning Glory No. 2.

A. "I claim an illuminated exterior wall M, in combina- "tion with a coal-supply chamber, and an intermediate gas "consuming chamber substantially as described."

Record, p. 27, fol. 54.

B. "The illuminated exterior wall or cylinder M, with "openings F, therein, glazed with isinglass or any trans- "parent substance, or any equivalent therefor, in combina- "tion with a coal-supply chamber, and an intermediate "chamber G, wherein gas is consumed, at or around the fire- "pot, or any appendage thereof, substantially as, and for the "purpose herein described and set forth."

Record, p. 103, fol. 230.

C. "A stove or furnace, having a supplying cylinder, or "reservoir over the fire-pot, and a chamber for receiving the "products of combustion arranged so as to inclose the cover "opening of the supplying cylinder, when the fire-pot is "constructed with openings or outlet space, to said chamber, "sufficient in area to enable anthracite coal and other con- "centrated fuels to be burned, and to transmit all the pro- "ducts of combustion and generated gases freely to said "chamber."

Record, p. 114, fol. 251.

D. "The combination of a chamber for receiving the "products of combustion, so arranged as to inclose the cover "openings of the coal supplying cylinder, with a fire-pot "which has an aggregate area of openings, or outlet space "to said chamber exceeding that of the air supply apertures "through the fire grate below.

Record, p. 114, fol. 251.

E. "An illuminating exterior case having its windows or "illuminating apertures either in its fixed portion or in any "door, or movable part thereof, in combination with a sup- "plying cylinder for reserve coal, and a chamber which re- "ceives the products of combustion from the firepot."

Record, p. 119, fol. 260.

F. The combination of a fuel-supplying cylinder with a fire-pot when the said supplying cylinder has its cover open- ing inclosed within a chamber or space communicating not only with the outlet from the fire-pot, but also with the exit flue substantially as herein described, when the case form-

ing said inclosing chamber becomes a part of the stove itself and is so constructed, united and combined with other parts of the stove as to form a complete manufactured article, or a structure having vitality as a complete individual thing, for the combustion of anthracite and other concentrated fuel, substantially in the manner and for the purposes herein specified.

Record, p. 134, fol. 200.

G. "The arrangement, adaptation and combination with "a fuel supplying cylinder stove, of an illuminating case to "the chamber which receives light and the gaseous pro- "ducts of combustion from the burning fuel when said case "is illuminated by windows or glazed apertures arranged "continuously upon every side, or in so much of its surface "as may be fully exposed to view, substantially in the man- "ner and for the purpose herein set forth."

Record, p. 136, fol. 294.

H. "A fire-pot constructed substantially as described, "in combination with a fuel supplying cylinder, having its "cover opening surrounded by a chamber which communi- "cates with the outlet from the fire-pot, and also with the "flue leading to the chimney, when the openings in the "fire-pot or outlets therefrom are broadest at the bottom, as "and for the purposes specified."

I. "The combination of a fire-pot constructed substan- "tially as described, with a fuel supplying cylinder, which "has its cover opening surrounded by a chamber which "communicates with the outlet from the fire-pot, and also "with the flue leading to the chimney, when the aggregate "amount of outlet space from the fire-pot exceeds the "amount of inlet, as and for the purpose specified."

Record, p. 138, fol. 298.

J. Is the arrangement, adaptation and combination with a fuel-supplying stove, of a cover so hinged to the top plate of the stove that it may be swung open on a horizontal plane, substantially in the manner and for the purposes specified.

Record, p. 141, fol. 301.

K. "The 'mill-grate' A, B, constructed and operating "substantially as and for the purposes herein specified."

Record, p. 146, fol. 312.

L. "The construction of the fire-pot D, with outwardly "projecting combustion mouths or outlets *d d*, opening "immediately into and in combination with the chamber "E, for the purpose herein specified."

Record, p. 146, fol. 312.

M. "The form and arrangement of the case M, in rela- "tion to and in combination with the fire-pot D, and cham- "ber E, substantially as and for the purpose herein set "forth."

Record, p. 146, fol. 312.

N. "Compelling the draft to pass upward through the "supplying cylinder H, while kindling the fire in the stove, "and immediately previous to, as well as during the act of "replenishing the cylinder with coal for the purpose speci- "fied, and this irrespective of the special construction by "which the same is effected."

Record, p. 146, fol. 312.

O. "The central chamber above the supplying-cylinder "H, communicating with the exit flue *p*, whereby any air "that passes into said chamber by the cover R, is conveyed "to the exit flue, as specified."

Record, p. 146, fol. 312.

P. "The divided flue K, around the chamber I, and "forming a communication between the front of the cham- "ber E, and the exit flue *p*, whereby the products of com- "bustion are conveyed to the chimney without interfering "with the action of the said chamber, and the radiation of "heat from the stove is properly distributed, as herein set "forth."

Record, p. 146, fol. 312.

Q. "The sliding plate or valve N, so arranged that it "necessarily closes the opening *o* from the chamber E, to the "flue K; when the aperture *n* from the supply cylinder H, "to the central chamber I, is opened, and *vice versa*, whereby "the draft is directed at pleasure either up through the "chamber E, or the supply cylinder H, for the purposes "herein set forth."

Record, p. 146, fol. 312.

THE MORNING GLORY No. 3.

A. "An illuminated exterior wall M, in combination with "a coal-supply chamber, and an intermediate gas consuming "chamber substantially as described."

Record, p. 27, fol. 54.

B. "The illuminated exterior wall or cylinder M, with "openings F, therein, glazed with isinglass or any transpa- "rent substance, or any equivalent therefor, in combination "with a coal supply chamber, and an intermediate chamber "G, wherein gas is consumed, at or around the fire-pot, or "any appendage thereof, substantially as and for the pur- "pose herein described and set forth.

Record, p. 103, fol. 230.

C. "A stove or furnace, having a supplying cylinder, or "reservoir over the fire-pot, and a chamber for receiving the "products of combustion arranged so as to inclose the cover "opening of the supplying cylinder, when the fire pot is "constructed with openings or outlet space, to said chamber, "sufficient in area to enable anthracite coal and other con- "centrated fuels to be burned, and to transmit all the pro- "ducts of combustion and generated gases freely to said "chamber.

Record, p. 114, fol. 251..

P. "The combination of a chamber for receiving the "products of combustion, so arranged as to inclose the cover "openings of the coal supplying cylinder, with a fire-pot "which has an aggregate area of openings, or outlet space

"to said chamber exceeding that of the air supply apertures "through the fire grate below.

Record, p. 114, fol. 251.

E. "An illuminating exterior case having its windows, or "illuminating apertures, either in its fixed portion or in any "door, or movable part thereof, in combination with a sup- "plying cylinder for reserve coal, and a chamber which re- "ceives the products of combustion from the fire-pot."

Record, p. 119, fol. 260.

F. The combination of a fuel supplying cylinder with a fire-pot, when the said supplying cylinder has its cover opening inclosed within a chamber or space, communicating not only with the outlet from the fire-pot, but also with the exit flue, substantially as herein described, when the case forming said inclosing chamber becomes a part of the stove itself, and is so constructed, united and combined with other parts of the stove as to form a complete manufactured article, or a structure having vitality as a complete individual thing for the combustion of anthracite and other concentrated fuel, substantially in the manner and for the purposes herein specified.

Record, p. 134, fol. 290.

G. "The arrangement, adaptation and combination with "a fuel supplying cylinder stove, of an illuminating case to "the chamber which receives light and the gaseous pro- "ducts of combustion from the burning fuel, when said "case is illuminated by windows or glazed apertures "arranged continuously upon every side, or in so much of "its surface as may be fully exposed to view, substantially "in the manner and for the purpose herein set forth."

Record, p. 136, fol. 294.

H. The arrangement, adaptation and combination with a fuel supplying stove, of a cover so hinged to the top plate of the stove that it may be swung open on a horizontal plane, substantially in the manner and for the purpose specified.

Record, p. 141, fol. 301.

I. "The 'mill grate' A, B, constructed and operating "substantially as and for the purposes herein specified."

Record, p. 141, fol. 301.

J. "Compelling the draft to pass upward through the "supplying cylinder H, while kindling the fire in the stove, "and immediately previous to, as well as during the act of "replenishing the cylinder with coal for the purpose speci- "fied, and this irrespective of the special construction by "which the same is effected."

Record, p. 141, fol. 301.

K. "The central chamber above the supplying cylinder "H, communicating with the exit flue *p*, whereby any air "that passes into said chamber by the cover R, is conveyed "to the exit flue, as specified."

Record, p. 141, fol. 301.

L. "The divided flue K, around the chamber I, and "forming a communication between the front of the cham- "ber E, and the exit flue *p*, whereby the products of com- "bustion are conveyed to the chimney without interfering "with the action of the said chamber, and the radiation of "heat from the stove is properly distributed, as herein set "forth."

Record, p. 141, fol. 301.

M. "The sliding plate or valve N, so arranged that it "necessarily closes the opening *o* from the chamber E, to the "flue K, when the aperture *n* from the supply cylinder H, "to the central chamber I, is opened, and *vice versa*, whereby "the draft is directed at pleasure either up through the "chamber E, or the supply cylinder H, for the purposes "herein set forth.

Record, p. 146, fol. 312.

N. "In stoves that employ a supplying cylinder or res- "ervoir for reserve coal, is the suspension or arrangement "of the fire-pot in a chamber C, at the base of the stove,

"entirely shut off or separated from the chamber which "receives the heat directly from the burning fuel and the "heated products of combustion, so that said chamber C, may "separately receive the heat radiated from the outer surfaces "of the fire-pot, and transmit it to the surrounding case, "and from thence radiate it near the floor to the apartment "to be warmed, substantially as herein specified.

Record, p. 157, fol. 334.

O. "In combination with the fire-pot, suspended or ar- "ranged in a separate chamber at the base of the stove, I "also claim the suspension of the supplying cylinder in the "chamber G, above and separate from the fire-pot, substan- "tially as and for the purpose herein set forth.

Record, p. 157, fol. 334.

P. "The construction and arrangement of the stove in "such a manner that it not only may be a connected whole, "but may be readily separated into two sections (figs. 3 "and 4) each complete in itself to the extent described, "when thus applied to the suspended fire-pot in a separate "chamber at the base of the stove, and to the separate sus- "pended supplying cylinder, substantially as and for the "purpose herein set forth.

Record, p. 157, fol. 334.

Q. "Suspending the detachable soapstone or fire-brick "supporting cylinder, or section L, of the separately sus- "pended supplying cylinder, by means of the eyes *o o*, and "stirrups or hasps *p p*, or their equivalents, substantially "as herein specified."

Record, p. 157, fol. 334.

PART FIRST.

POINTS FOR THE APPELLEE IN SUPPORT OF THE DECREE.

First. By the agreement and transfer of April 5, 1853, set out in the original bill of complaint, Littlefield assigned and transferred to Treadwell & Perry the exclusive right for the states of New York and Connecticut in the patents and inventions referred to in the bill of complaint, and to any and all improvements and extensions thereof.

Record, pp. 8 to 11, fols. 19 to 26.

This proposition was four times adjudged by Mr. Justice Nelson in the court below, after four separate arguments by different counsel for the defendants, as follows:

a. On motion for an injunction, argued October, 1862; decided November 21, 1862.

Record, p. 33, fols. 69 to 71.

b. On a motion to dismiss the original bill for want of jurisdiction in May, 1863; and decided October 24, 1863.

Record, p. 76, fol. 159.

c. On a motion for an attachment against the defendants for violating the injunction, and on a cross-motion to dissolve the injunction argued in July, 1865, and decided August 15, 1865.

Record, pp. 186, 188, fols. 419 to 422, 427.

d. On the final hearing on pleadings and proofs argued in October, 1865, and decided August 20, 1866.

Record, p. 187, fols. 423 to 426.

1. The language employed in the agreement and transfer does not admit of any doubt of the correctness of the several decisions made in the court below upon this branch of the controversy. It is clear and unequivocal.

2. The transfer of an invention before a patent has been issued, or of improvements upon a patented machine or article, is valid before the patent for the improvement has been taken out, and the right will be protected both in courts of law and equity.

Nesmith *v.* Calvert, 1 Wood, and Minott, 34.
Mitchell *v.* Winslow, 2 Story C. C. R. 630, 38.
Woodworth *v.* Sherman, 3 id. 171.
Curtis on Patents, § 189.
Perry *v.* Corning, 7 Blatchf. C. C. R. 195, 200.
Gibson *v.* Cook, 2 id. 144, 148.
Potter *v.* Holland, 4 id. 206, 211, 212.
Gaylor *v.* Wilder, 10 How. U. S. 477, 494.

3. In the present case the claim and specification for an improvement in the patent of April 15, 1851, was on file in the patent office at the time of the transfer (April 5, 1853), and is specially referred to in the agreement, and the improvements mentioned in this specification were the foundation of the patent of January 24, 1854, which is the basis of all the subsequent re-issues, and all the subsequent independent patents only embrace improvements upon the stove patented January 24, 1854.

4. The assignment or transfer of a patent or of an invention before a patent is issued, may be lawfully made and the monopoly is thereby vested in the assignee or grantee, and if of an invention before the patent issued, no new transfer is necessary, as the property vests in the assignee or grantee by operation of

law, and the patentee or inventor is estopped from setting up any adverse title.

Gaylor *v.* Wilder, 10 How. (U. S.) 477, 493.
Herbert *v.* Adams, 4 Mass. R. 15.
Rathbone *v.* Orr, 5 McLean, 131.

5. It has been fully shown, that the inventions and patents in controversy were all embraced in the transfer of April 5th, 1853, not only by the very language of the instrument, but by all of Littlefield's acts and declarations subsequent to that date until he undertook, with the aid of his co-defendant Jagger, to repudiate all his obligations.

6. This was the view of Mr. Justice Nelson (p. 186). He says: "The court has heretofore held, that "the agreement between Littlefield, of the one "part, and Treadwell & Perry, of the other, dated "5th April, 1853, vested the latter with the legal "title to the patent of 15th April, 1851, and with "an equitable title to any and all the improve- "ments then made, or thereafter to be made upon "the same; and further, that the patents of "January, 1854, and of June and November, "1861, embodied the principles, and were but "improvements upon the patent of 15th April, "1851, and of the inventions and improvements "embraced in the application to the Patent Office, "for a patent dated December 26, 1852, and which "is referred to specially in the agreement between "the parties. This opinion, which was entertained, "and upon the strength of which the injunction "was issued, is confirmed by further consideration, "and after a personal examination of stoves con- "structed in conformity with the several improve- "ments."

"We are also entirely satisfied, after an exami- "nation of samples of the stoves, which it is "admitted the defendants have been engaged in

"manufacturing, using, and vending since the "injunction, and also after a very full consideration "of the facts in the case, presented by the respective "parties, that the defendants are guilty of an "infringement of the injunction. Indeed, on the "argument, they scarcely denied the infringement, "if the consideration previously given to the "agreement by which the interest in the patents "and improvement of Littlefield in stoves was "vested in the complainants, was adhered to."

"We have referred to this opinion or construc- "tion of the agreement at this time, not because "it has any reference to the motion now before "us, but because it was particularly noticed by the "defendants, and also for the reason the produc- "tion of specimens of the various improvements "in the stoves affords a better opportunity for "examination of the question than when the case "was formerly before us. We do not revise the "grounds of the judgment of the court, in grant- "ing the injunction on a motion for an attachment "for an infringement of the writ."

SECOND. At the final hearing of this cause in the court below, upon pleadings and proofs, a technical objection was, for the first time, started by the then counsel for the defendants, that there was a defect in the transfers of the rights granted to Treadwell & Perry by Littlefield under the instrument dated April 5th, 1853. This objection having been overruled by Mr. Justice Nelson was made the ground of a motion for a rehearing of the cause, and that having been denied, the objection may be again urged in this court, and in view of that contingency may be briefly considered.

1. *a.* This objection, if it be one, appears on the face of the original bill of complaint, and the allegation there is in substance that on the 5th of March, 1862, Treadwell & Perry transferred

all their rights under the agreement with Littlefield, of April 5th, 1853, to George W. Sterling, which transfer was recorded in the patent office, on the 31st day of May, 1862.

Record, p. 28, fol. 55.

b. That on the 26th of June, 1862, Sterling reconveyed to Treadwell & Perry, and this re-transfer was recorded in the patent office, on the same day (June 26, 1862).

Record, p. 28, fol. 55.

c. That on the *7th of April*, 1862, Treadwell & Perry transferred the same interest to Andrew Dickey, and that transfer was recorded in the patent office, on the 26th of June, 1862, *the same day* with the recording of the re-transfer of Sterling to Treadwell & Perry.

Record, p. 28, fol. 55.

d. On the 2d of July, 1862, Dickey transferred to Mary J. Perry, and this was recorded in the Patent Office, on the 29th of July, 1862.

Record, p. 28, fol. 55.

e. It thus appears that the precise defect is supposed to consist in the transfer to Dickey on the 7th of April, 1862, apparently, before Sterling had re-transferred to Treadwell & Perry, the same interest, which he apparently had under the transfer of the prior 5th of March, 1862. This supposed technical difficulty we shall attempt to obviate.

2. It may be generally observed, that the record discloses that the defense of Littlefield and his co-defendant has, at different times, assumed a variety of phases scarcely creditable to the ingenuity of the inventor. Underlying the whole has been the apparent delusion, that the contract or transfer of April 5, 1853, conveyed nothing but the patent of

April 15, 1851, under which no stoves were ever put in the market; that performance having been declared by Littlefield to be "only a germ" from which greater things were to arise.

Record, p. 450, fol. 835.

It has been shown, that when he came to Albany to make a contract with Treadwell & Perry, he brought with him a stove constructed in accordance with the specifications for a patent filed December 30, 1852, and upon which the patent of January 24, 1854, was issued, and upon the basis of which the contract of April 5, 1853, was made between him and Treadwell & Perry.

Record, p. 199, fol. 467 *et al.*

3. To the original bill, filed in August, 1862, the defendants jointly and severally answered in October of that year, by solicitor and counsel J. J. Greenough.

Record, pp. 31, 32, fol. 65.

In the following December, Jagger, by J. Tiffany, solicitor, filed a separate amended answer to the original bill of complaint (fols. 75 to 80), and at the same date by the same solicitor Littlefield, his separate amended answer to the original bill (fols. 109 to 140). To these separate amended answers replications were duly filed in January, 1863.

Record, pp. 75, 76, fols. 157, 158.

In the following months a motion to dismiss the bill was made by the defendants and denied.

Record, p. 76, fol. 159.

In the following December the defendant Littlefield, by Glover and Darling, his solicitors, put in a further separate amended answer to the original bill of complaint.

Record, pp. 76–87, fols. 163–181.

At about the same time, by the same solicitors, Jagger put in a further separate amended answer to the original bill of complaint (fols. 197 to 208), and upon these answers an issue was subsequently formed by the filing of a replication.

Record, p. 99, fol. 217.

The original suit having abated, on the 27th o December, 1864, leave was given to file a bill of revivor and supplement, and the defendants also had leave to file further separate amended answers to the original bill and separate answers to the bill of revivor and supplement.

Record, pp. 99, 100, fols. 219, 220.

Pursuant to leave thus granted, both Littlefield and Jagger filed further separate amended answers to the original bill on the 6th of February (fols. 345 to 372, 379 to 385), and also each defendant filed a separate answer to the bill of revivor and supplement on the 27th of February, 1865 (fols. 389 to 400, 403 to 412), and upon the issues joined by replication to the answers last mentioned, the cause proceeded to final hearing upon pleadings and proofs.

Record, p. 185, fols. 415, 416.

4. Upon the point we are now considering, it is not deemed material to refer to any other than the last amended answers to the original bill, as they supersede all the previous ones (which are to be regarded as expunged from the record), and the answers to the bill of revivor and supplement, and it is respectfully submitted that these answers, fairly construed, do not put in issue the question of the original complainant's legal right by the various transfers set out in the bill of complaint, or permit the appellants to raise the technical objection referred to.

5. As before stated, the original bill alleges that the original complainant, Mary J. Perry, was vested

with all the legal and equitable rights transferred by Littlefield to Treadwell & Perry, under the agreement of April 5, 1853, by virtue of said transfers through George W. Sterling and Andrew Dickey, the dates of which are given in detail. We have before suggested that Littlefield & Jagger mainly rested their defense upon the ground that the agreement of April 5, 1853, did not transfer to Treadwell & Perry any right or interest in the patent of January 24, 1854, or in any of the reissues or patents which succeeded it, and of this theory of defense the last amended answers afford a perfect illustration. This circumstance being kept in mind, the meaning of the allegation, in the answers which may be supposed to relate to the present question, will be made the more apparent.

6. The last amended answer of Littlefield to the original bill avers (fol. 363) that he had no knowledge of the assignment to Sterling of the 25th of March, 1862, until the 21st of May thereafter. That on the 22d of May, he called upon Sterling, told him the assignment was a fraud, and threatened him with a lawsuit if he attempted to assert any rights.

The answer then further states that the assignment to Dickey of April 7, 1862, and of Dickey to Mary J. Perry on the 2d of July, 1862, were not known to Littlefield until he was served with a copy of the original bill. And then (fol. 364), after incoherent averments that Sterling, Dickey and others were engaged in a conspiracy to defraud him (fol. 365), Littlefield "denies that the said "Mary J. Perry is vested in law or equity with "the exclusive right or any rights under any of the "patents set forth in her said bill of complaint, under "said grant and supplementary agreement between "Treadwell & Perry and this defendant for the "reasons:

"*First*, that this defendant did not by said grant "and supplementary agreement convey to said "Treadwell & Perry the exclusive right within the "States of New York and Connecticut to the said "patent granted April 15, 1851, nor to any other "patent that might be granted thereafter to this "defendant for improvements therein, as fully ap- "pears by said supplementary agreement which "forms a part of the grant of the same date set "forth in said bill; and,

"*Second*, because the said Treadwell & "Perry, by reason of their failure without just "cause after reasonable notice on the part of "this defendant to fulfill and comply with, carry "out and perform the stipulations and condi- "tions contained in said grant and supplementary "agreement; said grant and supplementary agree- "ment became inoperative, void and of no further "effect; and all the rights conveyed to said Tread- "well and Perry by the same reverted and vested "in this defendant, in accordance with the condi- "tions and stipulations thereof."

"If, however," (proceeds the pleader) "the hon- "orable court should hold that the said grant and "supplementary agreement conveyed to Treadwell "& Perry the exclusive right to said patent of "April 15, 1851, within the States of New York "and Connecticut, and the same has not been ren- "dered void and forfeited, as aforesaid, but has "not been conveyed by the proper and legal trans- "fers to this complainant, she is not entitled to any "assurances or evidence of title to the said patent "of 24th of January, 1854, and June 25, 1861, and "the revivor thereof, for the reason that they are "not improvements in the invention patented April "15, 1851."

Record, p. 170, fols. 365, 366.

In this amended answer of Littlefield he says, in reply to interrogatory No. 2, that "this defend-

"ant admits that certain rights to the said inven-
"tion, and letters patent dated April 15, 1851, for
"the States of New York and Connecticut, were
"conditionally assigned to Treadwell & Perry on
"the 5th of April, 1853, but this defendant denies
"that the exclusive right was assigned to Tread-
"well & Perry; this defendant, reserving the right
"at all times to use or apply the principle of said
"invention to furnaces *_or stoves_ erected in the cel-
"lars or basements of houses for the purpose of
"heating several rooms, or larger part of a dwel-
"ling-house, and as to the transfers from the said
"Treadwell & Perry through various other parties
"to this complainant, he says, _there have been no_
"_such transfers with this defendant's knowledge,_
"_approbation or consent_, and _therefore, this de-_
"_fendant_ can neither admit nor deny that such
"transfers have been made, but insists that com-
"plainant be required to prove the same before
"they be taken as true."

Record, pp. 172, 173, fol. 370.

These are all the allegations in the last amended answer of Littlefield, relating to the point now under consideration, and it will be difficult to find in them any foundation for the technical objection now made, growing out of the supposed fact that when Treadwell & Perry assigned to Dickey on the 7th of April, 1862, the legal title was in Sterling.

(7). The last amended answer of Jagger to the original bill with less prolixity follows that of his confederate Littlefield. He denies that Treadwell & Perry ever had any interest in the patent of Jan. 24, 1854, and June 25, 1861, "but avers that the same vested in the said Dennis G. Littlefield, in the complainant's bill mentioned at the time of

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* *The words "or stoves" in the 11th line of this paragraph interpolated by defendant Littlefield. See Record, p. 11, fol. 25.*

filing her said bill" (fol. 382), and, by way apparently of foreclosing further dispute, he avers tha upon investigation before engaging with Littlefield he found that Littlefield was the owner of all the patents in dispute.

At folio 383 of the record he adopts Littlefield's notion as to answering interrogatory No. 2 of the original bill, and adds that "as to the transfers "from the said Treadwell & Perry, through "various parties to this complainant, this defend- "ant has no knowledge, and therefore can neither "admit nor deny that such transfers have been "made, but insists that complainant be required to "prove the same before they be taken as true."

It will be likewise difficult to find in these allegations that any question was to be made upon the supposed fact hat when Treadwell & Perry assigned to Dickey, the legal title to the patent was apparently in Sterling. Upon the issue the complainant's case is made out by proving the several assignments as alleged in the bill of complaint.

8. The answer of Jagger to the bill of revivor and supplement is not materially different in respect to the several transfers stated in the bill (fol. 392), and the same is true of the answer of Littlefield to the bill of revivor, etc., as will be seen by reference to the record.

Pages 181 to 183, fols. 405, 407, 408, 409.

It is therefore submitted, that inasmuch as the technical objection now urged appeared upon the face of the bill, it has not been sufficiently raised by the answers to be made available on this appeal for any purpose.

THIRD. The evidence in respect to the transfer of the interest of Treadwell & Perry, in the agreement of April 5th, 1853, to George W. Sterling, and through him, T. & P., and Dickey to the original complainant, Mary J. Perry, discloses the following facts:

1. About the 25th of March, 1862, Treadwell & Perry agreed to transfer their interest in the same to Sterling for the consideration of $300, and a transfer was afterwards made of that date to Sterling, which became of record in the Patent Office on the following 31st of May, 1862. Soon after this transfer it came to the knowledge of Littlefield, and he immediately called upon Sterling, and made various threats of prosecution against him if he should assume to act or assert any rights under the transfer. Sterling was thus intimidated by the bluster of Littlefield, and he requested Treadwell & Perry to release him from his contract, which they at once did. Sterling never asserted any rights under the transfer, and never paid any consideration, and never claimed any interest in it. He immediately made a formal re-transfer to Treadwell & Perry, but the paper was lost in the mail, and the second transfer was made on the 26th of the following June.

   Record, Bill, p. 28, fol. 55.
   Record, Bill, pp. 426, 427, 428, 429, fols. 805, 807.
   Record, Littlefield, p. 169, fol. 363.
   Record, Perry, pp. 210, 272, fols. 497, 583, 584.
   Record, Dickey, p. 365, fols. 716, 717.
   Record, W. B. Treadwell, pp. 317, 330, 331, fols. 649, 667, 668.

2. A transfer by Treadwell & Perry to Dickey, bears date on the 7th of April, 1862, when the apparent

title was in Sterling; when it was in fact delivered and took legal effect does not appear. It does, however, appear, that a formal re-transfer by Sterling to Treadwell & Perry, was recorded in the Patent Office on the same day, with the transfer of Treadwell & Perry to Dickey of the 7th of April, 1862, to wit, on the 26th day of June, 1862. It seems, therefore, that the assignment by Sterling, and the assignment to Dickey were in fact delivered at the same time, and as a part of the same transaction notwithstanding the discrepancy of dates.

Record, Bill, p. 28, fol. 55.
Record, Bill, p. 429, fol. 808.
Record, Perry, pp. 210, 272, fols. 497, 584.
Record, Dickey, p. 365, fol. 717.
Record, W. B. Treadwell, pp. 330, 331, fol. 668.

3. It therefore appears that although the formal transfer to Sterling was executed, the sale to him was never in fact consummated, and he was never vested with the legal or equitable right, and he never has claimed, and does not now claim any interest under the agreement and transfer of April 5, 1853. The first re-assignment to Treadwell & Perry was lost, and a duplicate subsequently made and recorded, and there is no possible contingency in which the defendants can be harmed, even if there is an apparent technical defect in the transfer which, however, we deny.

4. In fact the re-assignment by him to Treadwell & Perry effectually disposes of any claim he ever had or could have had, and he is estopped as against all the world from ever asserting any right whatever to the claim represented by the complainant on the record. Not having in fact accepted the original transfer as a consummated contract, having paid no part of the agreed consideration, and having,

with the assent of Treadwell & Perry, abandoned the entire thing, upon the threat of Littlefield to desist from any connection with the transaction, Sterling had in fact no right that he could successfully assert against any person in the world, and, therefore, a technical re-transfer was more a matter of form than of substance. But the re-transfer certainly enured to the benefit of all other persons interested in the rights in question, so far at least as to protect them from assault.

Perry *v.* Corning, 7 Blatchf. C. C. R. 195, 205.

5. The case of Perry v. Corning was decided by Woodruff, J., upon a demurrer to the bill where the facts relating to the transfers did not appear as they do in the present case, and the learned judge suggests, in his opinion, the very condition of facts proved in this case which would have obviated, in his mind, the alleged technical difficulty in the transfers to the complainant. (Id. pages 204, 205.)

a. In now appears that, the transfer from Treadwell & Perry to Sterling, was for a consideration of $300, and transferred "the several contracts above mentioned, and all our right, title, etc," (Record, pp. 426, 427, fols. 805, 806). This was a transfer of the thing itself, as well as of the title of Treadwell & Perry, and there was the ordinary implied warranty of title, on the sale of personal property, and the subsequent retransfer from Sterling, inured to the benefit of Dickey, and estopped Treadwell & Perry from ever asserting against Dickey and his grantee, their subsequently acquired title, if any such there can be said to have been.

1 Parsons on Contracts, p. 457–8, notes *g* and *h*, and cases cited.

6. The most acute form in which the supposed difficulty can be put, is that the technical right still

exists in Treadwell & Perry, that is, in William B. Treadwell and John S. Perry, the complainant below and present appellee.

The price to be paid by Sterling for the transfer by T. & P. was to be $300, and no part of this was ever paid by Sterling, but as before stated the contract was abandoned and never consummated. Before the bargain was given up, however, Perry paid to Treadwell his one-half of the anticipated purchase money from Sterling, which Treadwell still retains and makes no claim to the supposed right (fols. 667–668), and he clearly could enforce none with his share of the purchase price in his pocket. It therefore seems to follow, that, if there now exists any lurking, individual right in the inventions transferred or affected by the contract of April 5, 1853, not vested in Mary J. Perry when the original bill in this cause was filed, it is vested in John S. Perry the complainant below and the appellee in this court. So that every right that proceeded from Littlefield to Treadwell & Perry under the agreement or transfer of April 5, 1853, is in some form represented on the present record, so that it never can be made the subject of further controversy.

7. If it be therefore assumed, contrary to the real fact, that when John S. Perry, as trustee and executor of Mary J. Perry, deceased, filed the bill of revivor and supplement in this cause, he was the technical owner of the exclusive right to the various inventions mentioned in the pleadings and proofs, by reason of the supposed defective transfer, and that it had never in fact been technically vested in Mary J. Perry, and did not rest with him in his representative capacity, the case is not in its legal aspect materially changed. If the right existed in John S. Perry as an individual he had the power to waive it and give it over to the benefit of his wife's estate and her children

In other words, he might assume to hold and assert the right in his representative capacity, and this he has done, and he will be forever after estopped by the judgment in this suit from asserting the right in any other capacity.

It must therefore follow that the judgment in this case must forever settle all controversies growing out of the transfer by Littlefield to Treadwell & Perry, dated April 5, 1853, and it cannot be that any Court of Equity will ever disturb a decree rendered upon the merits, after a protracted investigation for any such supposed technical defect as upon this branch of the case may be again suggested.

8. The circumstance that the interest under the contract was disposed of apparently for a small consideration, is accounted for in the fact that it was of no value to any person not having experience and facilities for the manufacture of stoves, and at best would prove an experiment, against the success of which Littlefield threatened to make war with all his energies.

FOURTH. In addition to what is apparent by an inspection of the very numerous re-issues of patents in some respect involved in the present controversy, it will relieve the court to again recur to what at different times Littlefield himself has thought of the succession in title of his inventions, and of the rights of Treadwell & Perry, and their successors, under the contract or transfer of April 5, 1853.

a. We have seen that the stove of 1851 was only "a germ from which a more valuable con- "struction was to arise," and he adds that "in "the fall of 1852, the supplying cylinder was "combined with the cylindrical grated pot, *and* "*subsequently patented January* 24, 1854."

b. Also that the first stove manufactured by Treadwell & Perry in accordance with patterns got

up by Littlefield, or under his direction, was a complete failure. He says this stove was introduced to the trade by them that season as the "Lowell Gas Burner," but "its practi-"cal operation was unsatisfactory, to account "for which I am free to say, all parties, *myself* "*included*, were at fault." These patterns were improved, under his directions, in 1854, and stoves manufactured from them for ten years afterward.

c. Littlefield says: "From the circumstances "which brought about this arrangement it was "considered on my part as equivalent to a "division of the invention. I *was will-*"*ing to make such an arrangement, and re-*"*quired more money to develop my improve-*"*ments than I could command. I was to* "*give them the benefit of all subsequent im-*"*provements and protect them against in-*"*fringements*"

Littlefield, in this publication, then proceeds to describe his troubles, and his travels undertaken with a view to counteract the prejudice against the stove, in which he was for the time unsuccessful. He says "that there "was, however, no violation of good faith, and "is free to say that the whole difficulty arose "because we could not think alike.

d. Again he says, as late as 1860: "*This firm* "*have no right to manufacture or sell these* "*stoves except in the States of New York and* "*Connecticut.*"

This is all that has ever been claimed by Treadwell & Perry, or their successors in title, and it is this very right that Littlefield is resisting in this suit.

e. We have further seen that, in 1863, Littlefield described the Morning Glory" (No. 1), as

manufactured by Jagger & Littlefield, the stove claimed in this suit, to be an improvement upon the rights of the complainant, and on account of which the decree in the court below was rendered:

He says that, "In constructing this stove it "was deëmed advisable to put in practice the "aforesaid invention to serve as the fire-pot "or burning chamber, in other respects its "peculiar construction was subsequently "patented on the 26th of November, 1862. "Besides being covered by these two patents "(1861 and 1862), like my other stoves and "furnaces, *it is subordinate to the principal "claims of the patent of January* 24, 1854, "*as re-issued on the 3d of March*, 1863."

f. Again, "The Morning Glory" No. 2 varies from "The Morning Glory" No. 1 only as to the fire-pot or burning chamber.

g. Again, "The Morning Glory" No. 3, like "Nos. 1 and 2 employs a portion of the struc- "ture embraced in the patent of November "26, 1862, and is also subordinate to the "patent of January 24, 1854, as re-issued "March 3, 1863."

h. Besides all this, the uncontradicted evidence of experts in the case, shows the substantial identity of the inventions secured by the several patents and re-issues.

FIFTH. Assuming, as we properly may, that the contract of April 5, 1853, transferred to Treadwell & Perry, the invention secured by the patent of January 24, 1854, and that all the subsequent re-issues and patents were only improvements thereon, it will be difficult to sug-

gest any reason why the complainant was not entitled to the relief awarded in the court below.

1. It is in the first place to be observed that the case is in many of its features unlike any to be found in the books, or common in professional experience. Here the patentee is prosecuted for infringing a right in his own inventions and patents, which he has conveyed to another, and it follows that the entire interest in the patents are represented before the court, whether or not there is any lurking interest remaining in Littlefield, which we deny, as to the practice of any part of the invention in the States of New York and Connecticut. The court may deal with the case according to its justice and equity.

2. Nor can the defendants deny the validity of any of the original patents, or re-issues, or for improvements on the inventions, transferred by the agreement of April 5, 1853. The only question is who has the legal or equitable right; for the fact of infringement upon the pleadings and evidence is too plain for argument.

3. For an infringement of the exclusive right, conveyed by Littlefield to Treadwell & Perry, an action at law or suit in equity may be maintained against the patentee or any third person.

   Wilson *v.* Rosseau, 4 How. (U. S.), 646.
   Ogle *v.* Edge, 4 Wash. C. C. R. 584.
   Curtis on Patents, §§ 316, 317, 318.
   Suydam *v.* Day, 2 Blatch. C. C. R. 20.

4. The rights of the complainant are not in the least affected or impaired by the various surrenders and re-issues of the several patents. This having been done without his assent, the complainant may elect to rely upon the original patents, or to adopt and

rely upon the re-issues or as against the patentee, he may recover according to the equity and justice of the case, and it is not for him to assert his own wrong by way of defense.

Curtis on Patents, §§ 192, 193.
Woodworth *v.* Stone, 3 Story R. 749.
Woodward *v.* Hill, 1 Wood & M. 248.
Potter *v.* Holland, 4 Blatchf. 206.
McBurney *v.* Goodyear, 11 Cush. 511.

5. It must, of course, be remembered that the complainant's rights in the patents were limited to two States, the patentee having the right to all the rest of the territory of the United States. If, therefore, Littlefield had the right, on account of his larger interest in extent of territory, to surrender the patents without the consent of the complainant, and take out re-issues, it merely follows that all the benefit of the re-issued patents enures to the complainant, and he shares, by operation of law, all the benefits conferred by the re-issues.

Smith *v.* Mercer, 4 West. Law. J., 52, Kane J., Law Digest, 625.
McBurney *v.* Goodyear, 11 Cush. R. 571.
Potter *v.* Holland, Law Digest, 625, 4 Blatchf. 206.

6. It is, therefore, apparent that the decretal order pronounced by Mr. Justice NELSON, establishing the rights of the complainant and directing an account of profits to be taken, was right and ought to be affirmed.

PART SECOND.

Statement and Points respecting the Master's Report as to profits, etc., and the exceptions of the appellants thereto.

We now proceed to consider the exceptions to the Master's Report set out on pages 191 to 193. These are twenty in number, but when examined, substantially present only the inquiry, whether the amount reported was based upon sufficient competent proof.

The final decree directing the reference to the Master was made by the late Hon. Justice Nelson, and is printed on page 187.

The first report of the Master is on pages 188–9 and 90. The Supplemental Report is on page 195.

Proceedings before the Master on the Reference were commenced on September, 1866 (Record, p. 555), and were terminated by the Report of the Master, December 6, 1869. Nearly six hundred pages of proofs were submitted to him during this period of over three years — nearly all of which time and labor would have been saved, and the profits no doubt considerably increased, had the defendants, who were manufacturing the infringing stoves from May, 1862, to July, 1865, kept and submitted to the Master a separate account of the cost of their manufacture, and of the proceeds derived from sales thereof, as might easily have been done had they desired to separate their lawful from their unlawful business.

They failed to do this, however, but proposed, October 13, 1866, at the commencement of the defendant Littlefield's examination, before the Master (page 558), to make and submit to him a full statement of all advantages and

profits which the defendants, or either, had made by the manufacture, use or sale of the infringing stoves.

On the 24th of October (page 562), they further stated, whilst Littlefield was under examination, that the defendants were unable, before an examination of their books, accounts and papers, to state the amount of said profits and advantages, or the cost of their stoves manufactured and sold by them, or of the materials and various parts thereof; which examination and statement of books, accounts and papers they were having made by an accountant, and that the same would be completed in the shortest practicable time.

On the 27th of December, 1866, Littlefield, being then under examination, stated (page 698) that he should rely upon the books as being a correct statement of the sales and disbursements of the business — believing they, in connection with the defendants' vouchers, should show the exact amount of profits made by them; but that he was not *then* prepared to state the precise manner in which these were to be ascertained.

On the 15th of January, 1867, no statement having been, as promised, submitted by the defendants, the Master, that they might have all their books under their exclusive control, directed the accountant to deliver to them all he possessed (see page 717), to enable them to make and submit a statement by the first of March then next; and on the 25th of March, 1867, no statement having been delivered to him, the Master directed that, unless made out and submitted within ten days (page 717), the said books of account be re-delivered to the plaintiff, his agent or clerk.

It appears from the testimony of the defendant, Jagger (page 727), that as late as May 30, 1867, he alleged he was unable to state the amount of profits from the defendants' books; and on the 19th of January, 1869, at the very close of the examination (page 1073), the defendants say their promise made in October, 1866, to furnish an account, was made for the purpose of obviating the necessity for an extended oral examination of witnesses, and is to be deemed withdrawn.

There is no doubt that the defendants could have furnished the promised account, which would have disclosed with substantial accuracy the profits by them made upon the stoves in question. They resolved, however, in violation of their promise twice made, to violate it; and leave the complainant to grope, as he best could, through their books and among such of their vouchers as they saw fit to produce, for the purpose of ascertaining the profits made by them.

By evasion, professions of ignorance and misrepresentation, the defendants, and especially Littlefield, gave to the complainant but little of that aid which might, had they been frank and fair, have been afforded by their testimony. Littlefield does swear, however, that the cost of manufacturing the stoves could have been ascertained, and entered in their books (pages 644–645). Jagger also swears substantially the same (page 661), and Easterly, another witness, swears positively, that an account of the cost of manufacturing the stoves in question, could have been kept without the slightest difficulty (page 656–7).

It does appear, however, that although a separation from their other business of the costs of, and profits upon these stoves could thus have been kept, no such separation was made; and although the manufacture of the infringing stoves constituted about three-fourths of their entire business, no account was kept of the profits made upon them distinct from the profits made upon their entire business, unlawful and lawful. This is stated by Jagger, at page 660, and by Littlefield, at page 677; and this also appears from the books and is a fact established beyond dispute.

In view of this state of facts the Master proceeded to hear testimony as to the actual cost of manufacturing the stoves in question and the profits made thereupon. No proofs on this subject were, however, introduced on behalf of the defendants', although they were both sworn and very fully examined by the complainant; and were cross-examined at great length on their own behalf. On this testimony alone, independent of results produced by an examination of the defendants' books, it appeared that the

profits made by them on the stoves in question, after deducting all proper charges, amounted to nearly sixty-eight thousand dollars.

But it was more especially to the books of the defendants, that resort was had by the Master upon which to found his report. The accuracy of the results deduced from them is not disputed. They show a net profit on the entire business of the defendants, from June 1, 1862, to July 25, 1865, of $84,813.96 (page 754). The sales of the stoves in question were 74 per cent and a fraction of all sales made in their entire business; and therefore the proportion of profits only assignable to their unlawful business, upon the authority of the case of Goodyear vs. The Providence Rubber Co., in 9th Wall. 788, was about three-fourths of the entire profits made, or about $63,000, instead of $52,747.82, as found by the Master; he having made his report before the case referred to was reported.

In closing this general outline of facts, it may be well to state that, prior to August, 1865, the defendants had been violating the injunction long before issued, to restrain them from making and selling the stoves in question; and, on the 15th of that month an attachment was, by the late Mr. Justice Nelson, issued to punish them for this contempt.

In view of this the defendants, about the last of July, 1865, having dissolved their co-partnership, formed the Littlefield Stove Manufacturing Company, a sham concern, under cover of which they intended to continue to manufacture these stoves (page 580). And the more effectually to conceal their agency in this formation, they made a formal, but sham sale of their entire stock in trade, at Albany, for the nominal sum of about $50,000, to one J. W. Bonnell, a grocer, residing and doing business in Newark, New Jersey (see page 581–83). Bonnell never saw the property pretended to be sold, had no use for it, did not intend to engage in the manufacture or sale of stoves, knew nothing of the business, and Jagger was not only unable to state the terms of the sale, or what was to be received, but finally said Littlefield made the transaction and he thought notes were taken for part of the purchase money, but could not tell what proportion had been paid (see pages 583–4–5).

Littlefield, who conducted this sham transaction, says the amount of the sale was $50,000, that no notes were given, that no cash, but its equivalent, was paid; although he utterly refused to state in what this equivalent consisted; and he also refused to state what stock, if any, Bonnell took in the Littlefield Stove Manufacturing Company, to which he, as soon as it was formed, conveyed the property thus pretended to have been transferred to him (see pages 641–2).

This scheme of the defendants was soon frustrated by an injunction, which prohibited this pretended company, then under the sole management of the defendants, from manufacturing the stoves in controversy; and thus the profits to which the complainant should have been entitled on the authority of the case referred to, had the plan succeeded, were never made.

First.

The books of the defendants could have been so kept as to disclose the profits by them, made in the manufacture of the stoves in controversy (Jagger's testimony, page 591).

This is apparent without proof, and is also established by the evidence. It was clearly the duty of the defendants to have kept separate accounts of the cost of manufacturing these stoves; for not only did the defendant, Littlefield, know that he had no right to manufacture the same within the States of New York and Connecticut, but he was distinctly warned, as early as November 4th, 1861, that the rights he had parted with would be asserted (see page 801), and a like notice in substance was also sent to Mr. Jagger on the 2d of June, 1862 (page 94).

Moreover the bill in this cause was filed against the defendant in August, 1862—less than two months after the manufacturing was commenced; and on the 21st of November, of that year, the late Hon. Justice Nelson distinctly affirmed the complainant's rights as stated in the bill, and ordered an injunction to issue restraining the defendants from further infringing them (page 33).

The defendants, therefore, in view of this decision and assertions of right and claim under the contracts made by Littlefield, were under an obligation of duty to the court

and to the complainant, either to cease infringing or to keep separate and true accounts, showing the exact cost of the stoves by them manufactured—of all sales thereof, and of the profits made thereupon ; and having proceeded in violation of this duty to mingle the property of the complainants with their own, they must take the consequences; and if the court finds it difficult, under the circumstances, to make the separation and ascertain the profits they have made by the infringement, every presumption necessary to attain this end will be made against the defendants, and in favor of the complainants.

In reaching this result, however, the Master failed to indulge in any harsh, or indeed in any presumptions whatever against them. He heard the testimony patiently, and came to a conclusion quite in harmony with evidence of the defendants themselves, who were examined at great length. They introduced no proof on their behalf formally, being content, no doubt, to let the case stand upon their own oaths and books of account, supplemented by the evidence of witnesses sworn for the complainants whose statements could not be controverted.

On such proofs the question of profits was disposed of by the Master, whose only error was in awarding to the complainants some thirteen thousand dollars less than he should, whose report the court below, Judge Woodruff presiding, has affirmed upon great consideration, and this court is now asked to review their labors, and reverse their conclusions; and with an earnest desire to aid the court in this investigation, the following propositions are presented :

(pp. 196, 197.)

SECOND.

The improvements described and claimed in the patent of January, 1854, it is conceded by the defendants, and especially by the defendant Littlefield, entered largely into the construction of the Morning Glory Stoves, as they were called ; and these improvements, to which others based upon them were added, all passed to the complainant, and it was due to these, that all the profits made upon the stoves in question were realized.

This proposition is not seriously controverted, nor can any evidence be found in the record, which assigns these profits to any other cause or improvement. As to the identity of these stoves, with that patented January 24, 1854:

See testimony of Littlefield, pages 891–892–1009.
See also testimony of Jagger on this point, pages 725–6–7.
Testimony of Dickey, pages 805 to 813.
Testimony of Perry, pages 1066–1067.

The commercial value of this stove, which the complainant, at great expense of time, labor and money, had made the favorite stove in the market, is evident from the fact, that the defendants made and sold no other, and that the sales of this were a constant and serious injury to the complainant, who met with no other competition. Testimony of Dickey, page 711.

THIRD.

The most searching examination of the defendants, continued for months and even years, failed to disclose the exact amount of profits made upon these stoves, or the proportion their sales bore to the sales of all other articles made in their business, or indeed the profits made upon their entire business.

Jagger states (page 587), that the balance upon their ledger showed these profits to be $50,758.35, but, he added, he was not prepared to say it was a true statement of the profits; and on page 589, he testified that he never estimated the proportion of their entire business which was composed of the manufacture and sale of Morning Glory Stoves, but his opinion was, it amounted to about two-thirds; and as late as May, 1867, he swore that he could not then state from the books the profits made in this branch of their business (page 727).

He stated moreover that they sold all of these stoves they could make at their own prices. That they could, in 1862, have sold more if they had had them (pages 720–721), and on page 578, he testified they expected at the time the firm was formed, to make these stoves a very prominent part of their business.

On page 721, he declined to answer whether, from the

reputation of these stoves in the market, a very liberal profit could not have been fixed upon their price, without reference to the price of other stoves; and he admits, on the same page, that the largest amount of money was made upon the Morning Glory stoves.

He adds, they were satisfied they were making a fair business profit, which, he says, on page 592. would be between thirty per cent and forty per cent, but he does not state that the profit made did not greatly exceed that. On the same page, he declares his inability to state from memory the cost of making these stoves, nor can he state that the books will show it.

Enough of the testimony of this adverse witness has been referred to, to show very clearly his determination not to know, or if he knew, not to state the profits made on this branch of their business. But it abundantly appears from his examination, not only that this unlawful business was much larger than the lawful, but quite as profitable. It will be observed, also, that he does not venture even a surmise, as to the actual profit made on each of these stoves.

If we now turn to the testimony of Littlefield we shall find it almost if not quite equally indefinite, but very suggestive of large profits on this branch of the defendants' business.

At page 684 he attempts to make it appear that on these stoves the profits was but twenty per cent, whilst it was forty on the parlor furnace. But at the end of that page, and beginning of the next, he varies this by the statement that he won't swear to any definite amount of difference, but that the profit on the parlor furnace was greatest. On this statement, as the profit upon the latter was forty per cent, that on the Morning Glory stoves might have been thirty-nine.

On page 689 he admits that the profit on this stove was more than could have been realized from the sale of promiscuous parlor stoves; and on page 690 he testifies further on the same subject.

On page 697 he declined to answer what would be a fair margin of profit on the Morning Glory stoves; and on page 698 he states that he has no definite opinion as to what

was a fair margin of profit on them during the years 1862–3–4–5, and adds he shall rely on the books, *believing that they, in connection with the defendants' vouchers, will show the exact amount of profits made by the defendants;* adding that he was not then prepared to state the precise manner in which they were to be ascertained.

If we now refer briefly to the testimony of Dickey, a witness in no respect contradicted or impeached, or sought to be, we learn at pages 711–12 that the Morning Glory stoves were the only ones which came in competition with those substantially similar, made by Treadwell & Perry. He states also that the profits on the infringing stoves, thus made by the defendants, were from $5 to $8 on each stove.

On page 792 he states one means of judging of these profits, stating also at page 747 that the large sale of this kind of stove has been due to its superior merits, and that its sale by the defendants has been a constant and serious injury to the complainant (page 646).

A more extended examination of the proofs will disclose that, upon careful and reliable estimates made of the cost of these stoves, it appears that the profits made upon them have actually exceeded the sum reported by the Master by nearly $13,000, whilst these actual profits, thus ascertained from proofs not controverted, considerably exceed the presumptive amount thereof, as disclosed by the books of the defendants, after they had been carefully written up and balanced, involving, as this did, a correction of some two hundred and twenty-one errors found therein.

FOURTH.

We now call the attention of the court to testimony recorded by the defendants from day to day in their books of account, which conclusively establishes, even if we assume the profits on the patented stoves were no more than the profits on the other business of the defendants, that the complainant was entitled to recover some $13,000 more than has been decreed to him by the court below.

On page 667 will be found the commencement of the testimony of John A. Zweers, the book-keeper employed

by the Master to examine, write up, correct and balance the theretofore unbalanced and very inaccurately kept books of the defendants.

On pages 753-4 he states the manner in which he proceeded to perform this duty and the results of his labors, full copies in detail of all his work, being then, on the 23d of July, 1867, furnished to the Master, and to the defendants. His investigation of these books disclosed that the net profits of the defendants, made in their entire business from June 1, 1862, to July 25, 1865, amounted to $84,813.96

On page 772 this witness states that the proportion which the sales of the Morning Glory stoves and castings bore to the entire sales of the defendants during the period aforesaid was 74 per cent and a fraction, and, hence, assuming his testimony to be correct, the decree upon the authority of the decision in 9th Wallace should have been for some $63,000. This witness was subjected to a long cross-examination, commencing on page 773, which, however, utterly failed to disturb the conclusions to which he had arrived, but rather tended to confirm their soundness.

No proof whatever was offered by the defendants on this subject, and the case was therefore left to stand upon testimony that their books would disclose the profits by them made, and upon the evidence of this expert book-keeper, that they established the amount of profits, and proportion of sales above referred to. If, therefore, the decree, as to the amount of profits made by the manufacture and sale of the stoves in question, rested exclusively upon this branch of the testimony, it is confidently submitted it would not be disturbed on this appeal, for it is apparent that if some $13,000 had been added to the sum decreed, no injustice would have been done to the defendants.

The decree of the court below should be affirmed with costs.

E. W. STOUGHTON,
JOHN H. REYNOLDS,
Of Counsel for Appellee.

EXTRACT

FROM THE TESTIMONY BEFORE THE MASTER, SHOWING HOW THE AMOUNT OF PROFITS ON THE STOVES MANUFACTURED AND SOLD BY DEFENDANTS, WAS ASCERTAINED.

By the testimony of Mr. ZWEERS (No. 2167, pp. 770, 771), we learn that the entire amount of sales made by the defendants from June 1st, 1862, to July 25th, 1865, was $227,906.39.

This was made up as follows, viz.:

Morning Glory stoves	$169,074 29
Parlor furnaces	14,279 31
Portable and stationary furnaces	34,752 71
Odd castings	6,208 83
Soap-stone and brick	1,755 64
Mica	809 07
Sundries	1,026 54
Total	$227,906 39

The *net profits*, after paying all expenses on this amount, were $84,813.96, or 37¼ per cent.

This percentage of profit upon the sales of the Morning Glory stoves, viz.: $169,074.29, amounts to	$62,980 44
Same on brick and soap-stone on $1,755.64, which Littlefield testifies (No. 1115, p. 641), was all for the Morning Glory stoves	653 97
Same on ⅝ the amount of sales of Mica, viz.: $502.84, the proportion that Littlefield testifies (No. 1113, p. 641), was also for the Morning Glory stoves	187 31
Same on 74 per cent of sales of odd castings, viz.: $4,594.53, the proportion that Littlefield estimates (No. 1110, p. 641,) were from the Morning Glory patterns	1,711 46
Total profits	$65,533 18

If the profit on the sales was uniform, this would be the amount upon the sales of the Morning Glory stoves and repairs for same.

But we will go more into detail, and show what was the *actual amount of profits* upon this branch of the manufacture; and first,

THE COSTS AND PROFITS IN 1862.

"The firm made to December 1, of the No. 1 pat-
"tern, only Nos. 9, 10, 11, 12, 14, 16.

"During the balance of the year, an equal propor-
"tion of Nos. 1 and 2. The sizes of the No. 2 were
"Nos. 9, 10, 11, 12." (Littlefield, No. 62, p. 560.)

The weights of the patterns were as follows:

No. 1 Pattern.....	No.	9,	weighed	152	lbs.	14	ozs.,	at 10 pr ct.	strainage,	15	lbs.	5	ozs.	is	168	lbs.	3	ozs.
"	No.	10,	"	162	"	2	"	"	"	16	"	3	"		178	"	5	"
"	No.	11,	"	179	"	11	"	"	"	18	"	0	"		197	"	11	"
"	No.	12,	"	203	"	8	"	"	"	20	"	6	"		223	"	14	"
"	No.	14,	"	354	"	9	"	"	"	35	"	7	"		390	"	0	"
"	No.	16,	"	429	"	0	"	"	"	42	"	14	"		471	"	14	"
No. 2 Pattern.....	No.	9,	"	153	"	2	"	"	"	15	"	5	"		168	"	7	"
"	No.	10,	"	162	"	2	"	"	"	16	"	3	"		178	"	5	"
"	No.	11,	"	184	"	3	"	"	"	18	"	7	"		202	"	10	"
"	No.	12,	"	214	"	4	"	"	"	21	"	7	"		235	"	11	"
"	No.	14,	"	331	"	0	"	"	"	33	"	1	"		364	"	1	"
"	No.	16,	"	404	"	0	"	"	"	40	"	6	"		444	"	6	"

(Littlefield, Nos. 63, 146, pp. 560, 566.)

GOEWEY testifies (No. 1912, p. 732) that he made these stoves in 1861 on a strainage of 10 per cent.

The "Orientals" and other stoves of this character are now, and have been for years past, made on this percentage.

The castings were made for the defendants in the year 1862, by Shear, Packard & Co., on a credit of six months.

At per ton (Littlefield, Nos. 74, 81, pp. 561, 562)..	$63 50
Deduct six months' interest.....	2 22
Net cost of the castings	$61 28

The cost of same for each size of stove was as follows:

No. 1 pattern....	No. 9,	weighed	168	lbs.	3	ounces,	at $3.06 4-10	per 100,	$5.15 5-10
"	No. 10,	"	178	"	5	"	" "	"	5.46 4-10
"	No. 11,	"	197	"	11	"	" "	"	6.05 9-10
"	No. 12,	"	223	"	14	"	" "	"	6.86 3-10
"	No. 14,	"	390	"		"	" "	"	11.94 9-10
" ...	No. 16,	"	471	"	14	"	" "	"	14.46 2-10
No. 2 pattern...	No. 9,	"	168	"	7	"	" "	"	5.16
"	No. 10,	"	178	"	5	"	" "	"	5.46 4-10
"	No. 11,	"	202	"	10	"	" "	"	6.20 8-10
"	No. 12,	"	235	"	11	"	" "	"	7.22 1-10

In relation to the cost of mounting these stoves, I will quote the testimony of Easterly, who superintended the work for a series of years. He says (No. 640, p. 599):

"It was worth 40 cents each for labor and tools to "mount these stoves in 1861."

Again (No. 724, p. 605):

"I would mount two Morning Glory stoves for the "same as one Railway."

Again Nos. 854, 2159, pp. 615, 767): He shows detailed statements of the cost of mounting a variety of stoves and furnaces, in which the Morning Glories are rated at 40 cents.

JOHN MALONE, an experienced stove mounter, testifies (Nos. 1706, 1712, 1719, pp. 713, 714):

"I mounted the Railway coal-burners in 1859 at 50 "cents each for the labor only; they were worth more "to mount than the Morning Glories."

Mr. GOEWEY, who manufactured both stoves, testifies (Nos. 1908, 1924, pp. 732, 733):

"The Railway was worth the most to mount; I paid "50 cents apiece for the work."

Mr. ALBION RANSOM, of the firm of S. H. Ransom & Co., who manufactured the Railway in 1856, testifies (No. 1986, p. 738):

"We paid 37½ cents to 40 cents apiece for mounting "them."

EASTERLY testifies (No. 822, p. 613):

"When estimating with Mr. Littlefield for the mount- "ing of 1866, he told me, in his estimates, he had "found that the stoves had previously cost about 50 "cents to mount them — that is, small and large — in "1861 to 1864."

Thus it will be seen that the sum of 40 cents for mounting the Nos. 9, 10, 11 and 12, and 80 cents for Nos. 14 and 16, Morning Glory stoves, in 1862, including tools, is liberal.

In relation to the cost of the sheet iron bodies and reservoirs, LITTLEFIELD testifies (No. 1019, p. 632):

"That they paid for making the sheet iron work, and "mounting it upon the castings, 18 cents for Nos. 9, "10, 11 and 12, and 31 cents for the 14s and 16s."

As to the weight of the sheet iron, LANNIGAN testifies (Nos. 918, 920, 921, 922, pp. 621, 622):

"The Russia Iron in

"Nos.	9.	10.	11.	12.
"Weighs	4 lbs.	4 lbs.	4 lbs.	4½ lbs.
"The common sheet iron,	2 "	2½ "	3 "	4½ "

"The weight of Russia iron bodies, Nos. 9, 10, 11, 12, are (Average) 5½ lbs.
"Nos. 14 and 16 ..... 9 to 10 "
"Weights of common iron, Nos. 9, 10, 11, 12 ..... 3 to 5 "
"Nos. 14, 16 ..... 6 to 7 "
(Littlefield, Nos. 211, 213, p. 571.)

Cost of Russia sheet iron, $16\frac{93}{100}$ cents per lb.
Cost of common sheet iron, $5\frac{17}{100}$ cents per lb.
(Zweers, No. 1359, p. 671.)

Russia iron cost about 1 cent per pound extra for the tare.
(Van Wormer, No. 948, p. 626.)

The sheet iron for bodies were as follows, viz.:

Nos.	9,	10,	11,	12,	14,	16.
Weight of Russia iron...	4 lbs.	4½ lbs.	5 lbs.	5½ lbs.	9 lbs.	10 lbs.
Cost 17 93-100c. per lb., or,	71 7-10	80 7-10	89 6-10	98 6-10	$1.61 4-10	$1.79 3-10 each
Weight of common iron,	2 lbs.	3 lbs.	4 lbs.	4½ lbs.	6 lbs.	7 lbs.
Cost 5 17-100c. per lb., or,	10 3-10	15 5-10	20 7-10	23 3-10	31	36 2-10 each
Weight of short rods....	0.06	0.06	0.06	0.06	1.4	1.4
Weight of long rods.....	.12	.12	.12	.12	1.8	1.8
Per set.....	1.2	1.2	1.2	1.2	2.12	2.12

(Littlefield, No. 1015, 1016, p. 632.)

Rods inventoried March 1, 1863, at 7 cents per pound, or for Nos. 9, 10, 11 and 12 at 7 9-10 cents; Nos. 14 and 16 at 19 3-10 cents per set.
(Jagger, No. 422, p. 586.)

Six rivets for each stove (Littlefield, No. 1015), cost $2.00 to $2.25 per 1,000; say one cent for each stove. (Dickey, No. 1199, p. 649.)

Four 1 inch bolts required for each stove (Littlefield, No. 1015), cost 45½ cents per 100; say 2 cents for each stove (Dickey, No. 1200. p. 649). Eight 1¼ inch bolts required for each stove, Nos. 9, 10, 11, 12 (Littlefield, No. 1015, p. 632), cost 49 cents per hundred; say 4 cents for each stove (Dickey, No. 1200, p. 649). Eight 1½ inch bolts required for Nos. 14 and 16 (Littlefield, No. 1015, p. 632), cost 52 cents per 100; say 4 cents for each stove (Dickey, No. 1200, p. 649). Four 3 inch bolts required for Nos. 14 and 16 (Littlefield, No. 1015, p. 632), cost 72 cents per 100, or 3 cents for each stove (Dickey, No. 1200, p. 649).

Mica costs from 15 to 25 cents per set.

For Nos.	9,	10,	11,	12,	14,	16.
Cost say.....	15c.	17c.	19c.	21c.	23c.	25c.

(Littlefield, Nos. 116, 223, 1052, pp. 564, 572, 635.)

Twelve turnkeys and catches required for each stove.
(Lanigan, No. 918, p. 621.)

They weigh one pound.
(Dickey, No. 2081, p. 748.)

Cost 10 78-100 cents per pound (Zweers, No. 1361, p. 674), or 10 8-10 cents for each stove.

Cost of enameling urns, 18 cents each.
(Zweers, No. 1366, p. 674.)

Shakers and damper rods, cost to make, 6 cents for each stove.
(Zweers, No. 1365; Dickey, No. 2079, pp. 674, 747.)

Number of soap-stone bars required for the No. 1 stove.

Nos.	9,	10,	11,	12,	14,	16.
Bars.....	22	24	24	24	24	28

(Littlefield, No. 1024, p. 633.)

The soap-stone bars cost 2c. and 4c. each, or 44c., 48c., 48c., 48c., 96c., $1.12. (Zweers, No. 1364; Littlefield, No. 216, pp. 674, 572.)

Cost of the ornaments per set.

Nos.	9,	10,	11,	12,	14,	16.
Cost.....	15c.	16c.	16c.	18c.	21c.	24c.

(Dickey, No. 2086, p. 748.)

Cost of packing and shipping 45 stoves:

29 hours' labor at 87½c. per day.....	$2 54
1 bundle of laths.....	20
3 lbs. cord at 13c.....	39
45 tags and twine at $6.50 per M.....	29
	$3 42

Average 8 cents each.

Nos.	9.	10,	11,	12,	14,	16.
Say.....	6c.	6c.	8c.	8c.	10c.	10c.

(Gray, No. 1215; Dickey, No. 2072, pp. 652, 747.)

Total cost of the No. 1 stoves:

Nos.	9,	10,	11,	12,	14,	16.
Cost of castings....	5 15 5-10	5 46 4-10	6 05 9-10	6 86 3-10	11 94 9-10	14 46 2-10
" mounting..	40	40	40	40	80	80
" sheet iron work	18	18	18	18	31	31
" Russia iron bodies....	71 7-10	80 7-10	89 6-10	98 6-10	1 61 4-10	1 79 3-10
" English iron reservoirs,	10 3-10	15 5-10	20 7-10	23 3-10	31	36 2-10
" rods	07 9-10	07 9-10	07 9-10	07 9-10	19 3-10	19 3-10
" rivets.....	01	01	01	01	01	01
" bolts.....	06	06	06	06	09	09
" mica.....	15	17	19	21	23	25
" turnkey	10 8-10	10 8-10	10 8-10	10 8-10	10 8-10	10 8-10
" enamelling urns	18	18	18	18	18	18
" shakers and damper rods.....	06	06	06	06	06	06
" soap-stone..	44	48	48	48	96	1-12
" ornaments,	15	16	16	18	21	24
" pack'g, etc.,	06	06	08	08	10	10
	$7 85 2-10	8 37 3-10	9 14 9-10	10 10 9-10	17 12 4-10	20 07 8-10
Schedule B, p. 65, shows average prices realized...	12 54	14 64	16 73	18 60	23 99	30 43
Profits.....	$4 68 8-10	6 26 7-10	7 58 1-10	8 49 1-10	6 86 6-10	10 35 2-10

Deduct from above statement for sets of castings not mounted with sheet iron bodies.

Nos.	9,	10,	11,	12,	14,	16.
Russia iron bodies,	0.71 7-10	0.80 7-10	0.89 6.10	0.98 6-10	1.61 4-10	1.79 3-10
English iron reservoirs.....	0.10 3-10	0.15 5-10	0.20 7-10	0.23 3-10	0.31	0.36 2-10
Sheet iron work....	0.18	0.18	0.18	0.18	0.31	0.31
Ornaments.....	0.15	0.16	0.16	0.18	0.21	0.24
Packing, etc.....	0.06	0.06	0.08	0.08	0.10	0.10
Cost of mounting .	$1.21	1.36 2.10	1.52 3-10	1.65 9-10	2.54 4.10	2.80 5-10
Cost complete.....	7.85 2-10	8.37 3-10	9.14 9-10	10.10 9-10	17.12 4-10	20.07 8-10
Cost without mounting.....	$6.64 2-10	7.01 1-10	7.62 6-10	8.45	14.58	17.27 3-10
Schedule A, p. 104 shows average prices realized...	11.20	13.20	14.23	16.14	19.75	25.25
Profits.....	$4.55 3-10	6.18 9-10	6,60 4-10	7.69	5.17	7.97 7-10

STATEMENT OF THE COST OF MORNING GLORY No. 2.

Nos.	9.	10.	11.	12.	
Cost of castings.....	$5 16	$5 46 4-10	$6 20 8-10	$7 22 1-10	
Cost of soap-stone blocks.....	0 50	0 50	0 50	0 50	(Zweers, No. 1864.)
	$5 66	$5 96 4-10	$6 70 8-10	$7 72 1-10	
Cost of castings and soap-stone in No. 1.	5 59 5-10	5 94 4-10	6 53 9-10	7 34 3-10	
Excess of cost over No. 1....	$0 06 5-10	$0 02	$0 16 9-10	$0 37 8-10	

SALE OF ODD CASTINGS IN 1862.

(Zweers, No. 1353, p. 667)	2,290 lbs.	$102 06
Of this 79 per cent for the Morning Glory Stoves (Littlefield)	1,809 lbs.	81 63
Cost $61 $\frac{28}{100}$ per ton (Littlefield), $71.81		55 43
Profits.....		$26 20

Sales of mica (Zweers, No. 1353, p. 667) $60 24

$\frac{5}{8}$ of this amount for the Morning Glory Stoves (Littlefield, No. 1113, p. 641)..... 37 65

Aimed to make 12½ cents per set (Jagger, No. 1309, p. 661.)

Cost 15 to 25 cents per set (Littlefield, Nos. 116, 223. 1052, pp. 564, 572, 635.)

Average 20 cents per set, profit 12½ cents, or 32½ cents per set.

This would give 116 set at 12½ cents profit, $14.50.

Sales of soap-stone (Zweers, No. 2167, p. 768), $15.14. All this for the Morning Glory stoves (Littlefield, No. 1115 p. 641). We sold soap-stone and brick for double the cost (Jagger, No. 1310, p. 661). Profit on the soap-stone, $7.57

Recapitulation of Profits.

463	Morning Glory stoves,		No. 9,	$4.68 8/10	$2,170	54
587		do	do	10,	6.26 7/10	3,678	73
470		do	do	11,	7.58 1/10	3,563	07
194		do	do	12,	8.49 1/10	1,647	25
34		do	do	14,	6.86 6/10	233	44
19		do	do	16,	10.35 2/10	196	69
4	sets	do	do	9,	4.55 8/10	18	23
11	do	do	do	10,	6.18 9/10	68	08
13	do	do	do	11,	6.60 4/10	85	85
4	do	do	do	12,	7.69	30	76
7	do	do	do	14,	5.17	36	19
3	do	do	do	16,	7.97 7/10	23	93
1,809						$11,752	76

Deduct amount of additional cost of No. 2 stoves, being for one-half the sales in December, 1862 (Littlefield, No. 62), viz:

Sales for the month.....Nos.	9,	10,	11,	12.
	69	70	33	24

Additional cost on

34½	No.	9	of	No. 2	at	6 5/10	cents.....	$2 24
35	"	10	"	"	2	"	.....	0 70
16⅓	"	11	"	"	16 9/10	"	.....	2 79
12	"	12	"	"	37 8/10	"	.....	4 54
								10 27
								$11,742 49

Profit on odd castings.....	26	20
" mica.....	14	50
" soap-stone	7	57
Total profits on Morning Glory stoves and repairs for 1862	$11,790	76

The sales of the stoves were as follows:

463	Morning	Glory	stoves at	$12.54.....	$5,806 02
587	"	"	"	14.64.....	8,593 68
470	"	"	"	16.73.....	7,863 10
194	"	"	"	18.60.....	3,608 40
34	"	"	"	23.99.....	815 66
19	"	"	"	30.43.....	578 17
4	"	"	"	11.20.....	44 80
11	"	"	"	13.20.....	145 20
13	"	"	"	14.23.....	184 99
4	"	"	"	16.14.....	64 56
7	"	"	"	19.75.....	138 25
3	"	"	"	25.25.....	75 75

Profits on the same, $11,742.49 } $27,918 58
42½ per cent.

The Costs and Profits in 1863.

No. 3 Pattern	No.	9,	weighed	150	pounds,	10	per cent.	strainage	15.0	is 165.0
	"	10,	"	164	"	"	"	"	16.6	" 180.6
	"	11,	"	185	"	"	"	"	18.8	" 203.8
	"	12,	"	207	"	"	"	"	20.11	" 227.11
	"	14,	"	338	"	"	"	"	33.13	" 371.13
	"	16,	"	403	"	"	"	"	40.5	" 443.05

(Littlefied, No. 148, p. 566.)

Cost of castings..... $77 40

(Wasson, No. 2098, p. 750.)

Deduct 6 months' interest..... 2 70

$74 70

The cost of same for each stove is as follows:

No. 1, Pattern	No.	9,	weighed	168	pounds,	3	ounces,	$3.73 5-10	$6.28 2-10
	"	10,	"	178	"	5	"	"	6.66
	"	11,	"	197	"	11	"	"	7.38 4-10
	"	12,	"	223	"	14	"	"	8.36 1-10
	"	14,	"	390	"	0	"	"	14.56 6-10
	"	16,	"	471	"	14	"	"	17.62 8-10
No. 2, Pattern	No.	9,	"	168	"	7	"	"	6.29 3-10
	"	10,	"	178	"	5	"	"	6.66
	"	11,	"	202	"	10	"	"	7.56 7-10
	"	12,	"	235	"	11	"	"	8.80 2-10
	"	14,	"	364	"	1	"	"	13.59 7-10
	"	16,	"	444	"	6	"	"	16.59 7-10
No. 3, Pattern	No.	9,	"	165	"	0	"	"	6.16 3-10
	"	10,	"	180	"	6	"	"	6.73 6-10
	"	11,	"	203	"	8	"	"	7.60
	"	12,	"	227	"	11	"	"	8.50 3-10
	"	14,	"	371	"	13	"	"	13.88 7-10
	"	16,	"	443	"	5	"	"	16.55 7-10

"The cost of mounting these stoves in 1863, I estimate "at 50 cents each for the Nos. 9, 10, 11, 12, and $1.00 each "for the Nos. 14 and 16" (Easterly, Nos. 812 to 814, p. 612.)

"The price paid for the sheet iron work and putting on "the ornaments varied from 18 cents to 31 cents." (Littlefield, No. 2107, p. 750.)

"The weights of the sheet iron the same as in 1862." (Littlefield, No. 249, p. 574.)

The average cost of Russia iron was..... 20 cents.
" " common was ..... $6\frac{66}{100}$ "
(Zweers, No. 1359, p. 671.)

Russia iron costs 1 cent extra for the tare.
(Van Wormer, No. 948, p. 626.)

SHEET IRON BODIES AND RESERVOIRS.

For Nos.	9,	10,	11,	12,	14,	16.
Weight of Russia iron..	4 lbs	4⅕ lbs	5 lbs	5⅕ lbs	9 lbs	10 lbs.
Cost 21 cts per lb., or....	$0.84	0.94 5-10	1.05	1.15 5-10	1.89	2.10 each.
Weight of common iron,	2 lbs	3 lbs	4 lbs	4⅕ lbs	6 lbs	7 lbs.
Cost 6 66-100 cts per lb. or	$0.13 3-10	0.20	0.26 6-10	0.30	0.40	0.46 6-10 ea.
Weight of rods.....	1.2	1.2	1.2	1.2	2.12	2.12
Cost assumed, 8c per lb.	$0.09	0.09	0.09	0.09	0.22	0.22
Cost of rivets..... (Dickey, No. 1199.)	$0.01	0.01	0.01	0.01	0.01	0.01
Cost of bolts..... (Dickey, Nos. 1200, 1201.)	$0.07 5-10	0.07 5-10	0.07 5-10	0.07 5-10	0.11	0.11
Cost of mica..... (Littlefield, Nos. 220, 222, 223.)	$0.15	0.17	0.19	0.21	0.23	0.25

12 turnkeys and catches required for each stove.
(Lanigan, No. 918, p. 621.)

Cost 12 79-100 cents per lb., or 12 8-10 cents per stove.
(Zweers, No. 1361, p. 674.)

Shakers and damper rods cost 7 cents each stove.

Cost of No. 1 soap-stone, 2 cts. and 4 cts. each bar.
" " 2 " 50 " per set.
" " 3 brick, Nos.

	9,	10,	11,	12,	14,	16.
per set,	9c.	10c.	12c.	12c.	18c.	21c.

(Littlefield, No. 215; Zweers, No. 1367, pp. 572, 674.

Cost of ornaments, Nos.	9,	10,	11,	12,	14,	16.
per set,	16c.	17c.	17c.	19c.	23c.	26c.

(Dickey, No. 2087, p. 748.)

Cost of packing and shipping 45 stoves:

29 hours' labor	$1 25 per day,	$3 63
1 bdl. laths	22c.	22
3 lbs. cord	17c.	51
45 tags, and twine	8 50 per M.	38
		$4 74

Average, $10\frac{5}{10}$ cents each.

Say, Nos.	9,	10,	11,	12,	14,	16.
	$8\frac{5}{10}$	$8\frac{5}{10}$	$10\frac{5}{10}$	$10\frac{5}{10}$	$12\frac{5}{10}$	$12\frac{5}{10}$ cents.

(Gray, No. 1215; Dickey, Nos. 2072 to 2076, pp. 652, 747.)

Cost of the No. 1 Stoves.

Nos.	9,	10,	11,	12,	14,	16.
Castings	$6.28 2-10	$6.66	$7.38 4-10	$8.36 1-10	$14.56 6-10	$17.62 8-10
Mounting	0.50	0.50	0.50	0.50	1.00	1.00
Sheet iron w'k	0.18	0.18	0.18	0.18	0.31	0.31
Russia iron bodies	0.84	0.94 5-10	1.05	1.15 5-10	1.89	2.10
English iron reservoirs	.13 3-10	.20	.26 6-10	.30	.40	.46 6-10
Rods	.09	.09	.09	.09	.22	.22
Rivets	.01	.01	.01	.01	.01	.01
Bolts	.07 5-10	.07 5-10	.07 5-10	.07 5-10	.11	.11
Mica	.15	.17	.19	.21	.23	.25
Turnkeys	.12 8-10	.12 8-10	.12 8-10	.12 8-10	.12 8-10	.12 8-10
Shakers and damper rods,	.07	.07	.07	.07	.07	.07
Soap-stone	.44	.48	.48	.48	.96	1.12
Ornaments	.16	.17	.17	.19	.23	.26
Packing, etc.	.08 5-10	.08 5-10	.10 5-10	.10 5-10	.12 5-10	.12 5-10
Total	$9.14 3-10	$9.76 3-10	$10.69 8-10	$11.85 4-10	$20.24 9-10	$23.79 7-10
Schedule B. p. 165, shows average price realized	$13.85	$15.94	$18.61	$20.52	$27.51	$33.99
Profits	$4.70 7-10	$6.17 7-10	$7.91 2-10	$8.66 6-10	$7.26 1-10	$10.19 3-10

Sets of castings not mounted with sheet iron bodies.

1 No. 12 cost as above			$11 85 4/10
Deduct for Russia iron body	$1 15 5/10		
" English iron body	30		
" sheet iron work	18		
" ornaments	19		
" packing, etc.	10 5/10		
		1	93
Costs		9	92 4/10
Price realized		18	00
Profits		$8	07 6/10

STATEMENT OF THE DIFFERENCE IN THE COST OF THE No. 1 AND 2 STOVES.

Nos.	9,	10,	11,	12,	14,	16.
Cost of castings, No. 2	$6.29 3-10	$6.66	$7.56 7-10	$8.80 2-10	$13.59 7-10	$16.59 7-10
Cost of soapstone	.50	.50	.50	.50	.50	.50
	$6.79 3-10	$7.16	$8.06 7-10	$9.30 2-10	$14.09 7-10	$17.09 7-10
Cost of No. 1	6.72 2-10	7.14	7.86 4-10	8.84 1-10	15.52 6-10	18.74 8-10
Excess of No. 2	$0.07 1-10	$0.02	$0.20 3-10	$0.46 1-10	.....	.....
" " 1	.....	.....	.....	.....	$1.42 9-10	$1.65 1-10

STATEMENT OF THE DIFFERENCE IN THE COST OF THE No. 1 AND 3 STOVES.

Nos.	9,	10,	11,	12,	14,	16,
Cost of castings, No. 3	$6.16 3-10	$6.73 6-10	$7.60	$8.50 3-10	$13.88 7-10	$16.55 7-10
Cost of brick	.09	.10	.12	.12	.18	.21
	$6.25 3-10	$6.83 6-10	$7.72	$8.62 3-10	$14.06 7-10	$16.76 7-10
Cost of No. 1	6.72 2-10	7.14	7.86 4-10	8.84 1-10	15.52 6-10	18.74 8-10
Excess of No. 1,	$0.46 9-10	$0.30 4-10	$0.14 4-10	$0.21 8-10	$1.45 9-10	$1.98 1-10

Sale of odd castings in 1863 (Zweers No. 1353, p. 667).....	14, 063 lbs.	$824 87
Of this 77½ per cent for the Morning Glory stoves (Littlefield, No.)..	10, 899 lbs.	$639 27
Cost $74 $\frac{70}{100}$ per ton.....		407 08
Profits.....		$232 19

Sale of soap-stone (Zweers, No. 2167, p. 769), $517.67.

All for the Morning Glory stoves (Littlefield, No. 1115, p. 641).

We sold soap-stone and brick for double the cost. (Jagger, No. 1310, p. 661).

Profits on the soap-stone, $258.84.

Sales of mica (Zweers, No. 1353, p. 667)....	$276 26
5-8ths of this amount for the Morning Glory stoves (Littlefield, No. 1113, p. 641).	
Aimed to make 12½ cents per set (Jagger, No. 1309, p. 661).	
Cost 15 to 25 cents per set (Littlefield, Nos. 116, 223, 1052, pp. 564, 572, 635).	
Average 20 cents per set — profit 12½ cents —32½.	
This gives 850 sets. Profits.....	106 25

RECAPITULATION OF PROFITS.

749	Morning	Glory	stoves	No.	9,	profit	$4.70 7-10	$3,525 54
1072	"	"	"	"	10,	"	6.17 7-10	6,621 74
885	"	"	"	"	11,	"	7.91 2-10	7,002 12
443	"	"	"	"	12,	"	8.66 6-10	3,839 04
93	"	"	"	"	14,	"	7.26 1-10	675 27
55	"	"	"	"	16,	"	10.19 3-10	560 62
6 sets	"	"	"	"	12,	"	8.07 6-10	48 46
3303								$22,272 79

	Brought forward							$22, 272 79
Sales in 1863, one-third of each pattern, Nos. 1, 2, 3 (Littlefield, No. 143, p. 566).								
Add to above excess of profits over No. 1 on the following:								
31	No. 14	of	No. 2,	$1.42 9/10	.....	$44 30		
18 1/3	" 16	"	2,	1.65 1/10	.....	30 27		
249 2/3	" 9	"	3,	.46 9/10	.....	117 09		
357 1/3	" 10	"	3,	.30 4/10	.....	108 63		
295	" 11	"	3,	.14 4/10	.....	42 48		
144 1/3	" 12	"	3,	.21 8/10	.....	31 46		
31	" 14	"	3,	1.45 9/10	.....	45 23		
18 1/3	" 16	"	3,	1.98 1/10	.....	36 32		455 78
								$22, 728 57
Deduct for excess of cost over No. 1 on the following:								
249 2/3	No. 9	of	No. 2,	7 1/10	cts.	$17 72		
357 1/3	" 10	"	2,	2	cts.	7 14		
295	" 11	"	2,	20 3/10	cts.	59 88		
144 1/3	" 12	"	2,	46 1/10	cts.	66 54		151 28
								$22, 577 29
Profit on the castings for repairs								232 19
Profit on soap-stone and brick								258 84
Profit on mica								106 25
								$23, 174 57
The sales of the stoves were as follows:								
749	Morning Glory stoves at				$13 85	.....		$10, 373 65
1072	"	"	"		15 94	.....		17, 087 68
885	"	"	"		18 61	.....		16, 469 85
443	"	"	"		20 52	.....		9, 090 36
93	"	"	"		27 51	.....		2, 558 43
55	"	"	"		33 99	.....		1, 869 45
6	"	"	"		18 00	.....		108 00
								$57, 557 42

Profit, $22,577.29, or 39 1/4 per cent.

THE COSTS AND PROFITS IN 1864 AND 1865.

The stoves were all of the No. 3 patterns. (Littlefield, No. 250, 1868; Easterly, No. 672, pp. 574, 727, 602.)

In 1864 and 1865 there were made by Wasson 1,208,449 lbs. castings at $107.73 p. ton (Wasson, No. 2099, page 750.)	$65,093 50
Allowed on the same (Wasson, No. 2133, p. 752).....	3,000 00
	$62,093 50
Less six months' interest.....	2,173 27
	$59,920 23

or $99.16 9/10 per ton.

The cost of the same for each stove is as follows:

No. 3, pattern	No. 9,	weighed 165.0,	$4.95 8/10,	$8.18
	" 10,	" 180.6,	"	8.94 3/10
	" 11,	" 203.8,	"	10.09
	" 12,	" 227.11,	"	11.28 8/10
	" 14,	" 371.13,	"	18.43 4/10
	" 16,	" 443.5,	"	21.98

"The patterns of 1863 were the same as those of 1864, "substantially." (Littlefield, No. 2012, p. 740.)

"The cost of mounting the stoves, in 1864, is 10 per cent "more than in 1863, viz.: 55 cents and $1.10." (Easterly, "No. 816, p. 612.)

"The price for the sheet-iron work of the same from 20 "to 37½ cents each." (Littlefield, Nos, 253, 1020, pp. 574, 632.)

The weight of the sheet-iron the same as in 1862. (Littlefield, No. 249, p. 574.)

The average cost of Russia iron in 1864 and '65, 28 84/100 per lb.

The average cost of common iron in 1864 and '65, 10 41/100 per lb. (Zweers, No. 1359, p. 671.)

Russia iron costs one cent extra for the tare. (Van Wormer, No. 948, p. 626.)

Sheet Iron Bodies and Reservoirs.

Nos.	9,	10,	11,	12,	14,	16.
Weight of Russia iron...	4 lbs.	4⅕ lbs.	5 lbs.	5⅕ lbs.	9 lbs.	10 lbs.
Cost 28 84-100 cts. per lb..	1.15 3-10	1.29 8-10	1.44 2-10	1.58 6-10	2.59 6-10	2.88 4-10
Weight of common iron,	2 lbs.	3 lbs.	4 lbs.	4⅕ lbs.	6 lbs.	7 lbs.
Cost 10 41-100 cts. per lb..	0.20 8-10	0.31 2-10	0.41 6-10	0.46 8-10	0.62 4-10	0.72 8-10
Weight of rods, 1 lb. 2 oz.	1 2	1 2	1 2	1 2	1 2-10	1 2-10
Cost 10 cts. per lb.....	0.11 2-10	0.11 2-10	0.11 2-10	0.11 2-10	0.27 5-10	0.27 5-10
Cost of rivets.....	0.01 5-10	0.01 5-10	0.01 5-10	0.01 5-10	0.01 5-10	0.01 5-10

(Dickey, No. 1199, p. 649.)

Cost of bolts.....	0.08	0.08	0.08	0.08	0.12	0.12

(Dickey, Nos. 1200, 1201, p. 649.)

Cost of mica.....	0.17	0.19	0.22	0.24	0.27	0.30

(Littlefield, No. 255, p. 574.)

Twelve turnkeys and catches required for each stove. (Lanigan, No. 918, p. 621.)

Cost $16\frac{34}{100}$ cts. per lb., or $16\frac{3}{10}$ cts. per stove. (Zweers, No. 1361, p. 674.)

Shakers and damper rods cost ten cents for each stove.

Nos.	9,	10,	11,	12,	14,	16.
Cost of brick.....	0.12	0.14	0.16	0.17	0.24	0.28

(Zweers, No. 1367, p. 674.)

Cost of ornaments,	0.17	0.18	0.18	0.20	0.26	0.29

(Dickey, No. 2088, p. 748.)

Cost of packing and shipping 45 stoves:

29 hours' labor at $1.37\frac{1}{2}$ per day	$3 99
1 bdl. laths, 35 cts.....	35
3 lbs. cord, 22 cts.....	66
45 tags and twine, $8.50 per M.....	38
Average 12 cts. each.....	$5 38

Say Nos.	9,	10,	11,	12,	14,	16.
	10cts.	10cts.	12cts.	12cts.	14cts.	14cts.

(Gray, No. 1215; Dickey, Nos. 2072 to 2076, pp. 652, 747.)

COST OF THE No. 3 STOVES.

Nos.	9,	10,	11,	12,	14,	16.
Castings	$8.18	8.94 3-10	10.09	11.28 8-10	18.43 4-10	21.98
Mounting	.55	.55	.55	.55	1.10	1.10
Sheet iron work	.20	.20	.20	.20	.37 5-10	.37 5-10
Russia iron bodies	1.15 3-10	1.29 8-10	1.44 2-10	1.58 6-10	2.59 6-10	2.88 4-10
English iron reservoirs	.20 8-10	.31 2-10	.41 6-10	.46 8-10	.62 4-10	.72 8-10
Rods	.11 2-10	.11 2-10	.11 2-10	.11 2-10	.27 5-10	.27 5-10
Rivets	.01 5-10	.01 5-10	.01 5-10	.01 5-10	.01 5-10	.01 5-10
Bolts	.08	.08	.08	.08	.12	.12
Mica	.17	.19	.22	.24	.27	.30
Turnkeys	.16 3-10	.16 3-10	.16 3-10	.16 3-10	.16 3-10	.16 3-10
Shakers and damper rods	.10	.10	.10	.10	.10	.10
Brick	.12	.14	.16	.17	.24	.28
Ornaments	.17	.18	.18	.20	.26	.29
Packing	.10	.10	.12	.12	.14	.14
Cost	$11.32 1-10	12.38 3.10	13.84 8-10	15.29 2-10	24.71 2-10	28.75
Schedule B, p. 165, shows av. prices realized	$17.46 5-10	20.16	22.31 8-10	24.38 8-10	37.27	44.36
Profits	$6.14 4-10	7.77 7-10	8.47	9.09 6-10	12.55 8-10	15.61

Sales of odd castings in 1864 and 1865 (Zweers, No. 2175, p. 772,)	70, 399 lbs.	$5, 281 90
Of this 67⅓ per cent was for the Morning Glory stoves (Littlefield, No.).....	47, 402 lbs.	$3, 556 48
Cost per ton, $99.16 9–10.....		2, 350 40
Profits.....		$1, 206 08

Sales of soap-stone and brick, $1, 229.70. (Zweers, No. 2167, p. 769.)

All for the Morning Glory stoves. (Littlefield, No. 1115, p. 641.)

We sold soap-stone and brick for double the cost. (Jagger, No. 1310, p. 661.)

Profit on the soap-stone and brick, $614.85.

Sales of mica (Zweers, No. 1353, p. 667), $466.82. Five-eighths of this amount was for the Morning Glory stoves. (Littlefield, No. 1113, p. 641.)

Aimed to make 12½ cents per set. (Jagger, No. 1309, p. 661.)

Cost 15 to 25 cents per set.

Profit 12½ cents=32½ cents.

This gives 1436 sets at 12½ cents profit, $179.50.

RECAPITULATION OF PROFITS ON

817	Morning Glory stoves, No. 9 profits	$6 14 4-10		$5,019 65
1012	" " 10 "	7 77 7-10		7,870 32
890	" " 11 "	8 47		7,538 30
696	" " 12 "	9 09 6-10		6,330 82
200	" " 14 "	12 55 8-10		2,511 60
103	" " 16 "	15 61		1,607 83
3718				$30,878 52
	On castings for repairs			1,206 08
	On soap-stone and brick			614 85
	On mica			179 50
	Profits			$32,878 95

The sales of the stoves were as follows, viz.:

817	Morning Glory stoves at	$17 46 5/10		$14,268 90 5/10
1012	" "	20 16		20,401 92
890	" "	22 31 8/10		19,863 02
696	" "	24 38 8		16,974 04 8/10
200	" "	37 27		7,454 00
103	" "	44 36		4,569 08
				$83,530 97 8/10

Profits on the same, $30,878.52, or 36½ per cent.

Total amount of sales of the stoves from June 1, 1862, to July 25, 1865, $169,006.97.

Total amount of profits on the same, $65,198.30, or 38½ per cent.

FINAL RECAPITULATION OF PROFITS.

In 1862	$11,790 76
In 1863	23,174 57
In 1864 and '65	32,878 95
Total profits	$67,844 28

We have thus seen that the total amount of sales made by the defendants from June 1, 1862, to July 25, 1865, was $227,906 39

That the *net profits*, after paying all expenses, were 37½ per cent, or $84,813 96

And further, that at this percentage the net profits on the "Morning Glory" stoves and repairs would be	$65,533 18
And upon making a close calculation, we find that the true gross profits on these stoves and repairs were.....	67,844 28
Showing an excess of gross profits of...	$2,311 10

The testimony shows that there was during those years an advance in the cost of the material and labor. There was also an advance in the price of the stoves. This was a profit which cannot be shown in the calculation, for the reason that no inventory was taken in the winter or spring of 1863 or 1864. This advance, added to the $2,311.10 before mentioned, paid the contingent expenses, leaving a net profit on the stoves of $65,533.18.

The remarkable agreement between the two statements submitted to the master, viz: the one showing 37¼ per cent net profit on the stoves and repairs, or, $65,533.18, and the other, showing the actual amount of gross profits, viz: $67,844.28, when taken into consideration with the advance in price in 1863, 1864 and 1865, will command the attention of your Honors.

In justice and equity, the plaintiff should be allowed the full amount of the gross profits, which could not have been less than $75,000 or $80,000, as he was justly entitled to all the profits which the defendant realized from the manufacture and sale of the stoves and repairs. At any rate he should be allowed the net amount of profits proved, viz: $65,533.18. He had the organization and facilities for making any amount of these stoves; he also had the patterns, flasks and fixtures; he incurred the contingent expenses incident to carrying on the business, and it would be manifestly unjust to compel him to pay them a second time.

These contingent expenses, however, had all been paid out of the extra profits of the defendant's business; after

which there remained a clear balance of *net profits* on the sale of the stoves of..... $65,533 18
or 37½ per cent on the amount of such sales,
viz.:..... $175,927 30

E. W. STOUGHTON,
JOHN H. REYNOLDS,
Of Counsel for Appellee.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

DENNIS G. LITTLEFIED & IRA JAGGER. Appellants,

AGAINST

JOHN S. PERRY, TRUSTEE AND EXECUTOR OF MARY J. PERRY, DECEASED, Appellee.

REPLY TO THE IMPERFECT AND GARBLED EXTRACTS FROM THE RECORD FILED BY APPELLANTS.

E. W. STOUGHTON,
JOHN H. REYNOLDS,
of Counsel for Appellee.

WASHINGTON:
S. & R. O. POLKINHORN, PRINTERS
1874.

A REPLY

TO THE

APPELLANT'S IMPERFECT and GARBLED EXTRACTS

FROM THE RECORD.

FIRST. "The proofs relating to the various assignments of the contract of April 5, 1853, on which this action was based."

Appellant's extracts, pp. 1 to 12.

NOTE.—The words in italics are omitted from the passage, quoted in the appellant's "extracts."

Page 258, fols. 563, 564, John S. Perry's cross-examination.

Q. Did Treadwell & Perry include this contract *of September* 10, 1853, in their assignment to Andrew Dickey, *mentioned in the bill of complaint?*

A. It was included.

Q. Was it not stipulated in said contract of September 10, 1853, that Treadwell & Perry were not to dispose of the right *or privileges* thereby conveyed, except to their successors in business, without the written consent of said Littlefield?

A. It was.

Page 365 fols. 716, Andrew Dickey's cross-examination.

Q. Was Sterling present at the time of the execution of the assignment?

A. *I have no recollection about it.*

(The answer given in the "extract," as follows: "I can't say.")

Q. *Did Perry take the assignment down to Sterling, or was it sent by mail?*

A. *I can't say.*

Page 366, fols. 717, 718.

Q. What stove do you refer to as the Morning Glory as being made by Corning & Co.?

A. The one with soap stone *base.* (Should read *bars.*)

Q. Did John S. Perry pay you the consideration mentioned in the assignment?

A. I think he did, but it might have been *from* Mrs. Perry.

Q. Did you know at the time that she was the wife of John S. Perry?

A. I had every reason to suppose so.

Q. Who sent your assignment from Treadwell & Perry to Washington to be recorded?

A. I believe I did.

Q. Who wrote the letter that accompanied the assignment?

A. I think I did.

Q. Was the said assignment to you of the agreements executed on the day it bears date?

A. I think it was.

The following proofs from the Record relating to this question of the assignments, the appellants have omitted in their "extracts:"

Page 210, fol. 497, John S. Perry, direct.

Q. Did Treadwell & Perry ever make a transfer of this contract to James C. Cook, Esq., as receiver, and did Mr. Cook ever claim to have any control over it?

A. They never made any such transfer; Mr. Cook, never to my knowledge, claimed to have any control of it; but, on the contrary, always disclaimed it.

Page 212, fol. 500, John S. Perry, cross-examination:

Q. What did you intend to exclude? (from transferring to new firms).

A. There was quite a large list of accounts standing on the old books; there was some real estate; there were two contracts made with Mr. Littlefield, and there may have been other property which I do not now remember.

Page 224, fol. 516:

Q. Has Mrs. Perry, to your knowledge, disposed of any portion of her interest in the contracts assigned to her by Dickey?

A. She has not.

Page 227, fol. 520, John S. Perry, re-direct:

Q. How came you to write and sign as you did the letter marked No. 1?

A. Treadwells & Perry were the agents of John G. White, and they supposed he would buy the contract.

Q. That was written in anticipation of his buying, which he never did; was it not?

A. It was.

Page 229, fol. 523, John S. Perry, cross-examination:

Q. Did Cook, as receiver or otherwise, ever assume to sell or dispose of these contracts with Littlefield, in controversy here?

A. He never did.

Page 230, fol. 524, John S. Perry, re-direct:

Q. Was the contract with Littlefield, of April 5, 1853, transferred to W. & J. Treadwell, Perry & Norton, or included in the inventory of the property transferred to them?

A. It was not.

Q. Did it pass to James C. Cook, receiver, or was it included in any inventory of assets, made for, or by, or to him?

A. It did not, and it was not.

Q. Did Mr. Cook, as receiver or otherwise, ever claim it, or any right to it?

A. He never did, to my knowledge.

Page 280, fol. 595, John S. Perry, cross-examination.

Q. To your knowledge did Littlefield, previous to August 26, 1862 have any reason to know that Mary J. Perry had become the reputed owner of the contract of April 5th, and September 10th, 1853?

A. I can't answer as to what he knew.

Q. To your knowledge was Littlefield informed pre-

vious to August 26th 1862, that Andrew Dickey had ever been the reputed owner of said contract?

A. The means of information was provided him on the 26th day of June, 1862 by the record of this instrument of transfer.

Q. Do you know of any other knowledge he might have had?

A. There don't anything else occur to my mind at this moment.

Page 314, fol. 644, William B. Treadwell, direct.

Q. Did Treadwell, Perry & Co., or W. and J. Treadwell, Perry and Norton, ever have or claim to have any ownership or control of the contract of April 5, 1853?

A. They never did.

Q. Did Treadwell & Perry ever make a transfer of this contract to James C. Cook, Esq., receiver, and did Mr. Cook ever claim to have any control over it?

A. They never made any such tranfer, and I never heard Mr. Cook make any such claim.

Page 364, fol. 715, Andrew Dickey, cross-examination.

Q. Who did you suppose was the owner of said agreement previous to the time when you thought it was owned by John G. White?

A. Treadwell & Perry.

Q. What was your reason for supposing it belonged to Treadwell & Perry?

A. I had seen the contract and had never seen any change.

Page 713, fol. 1399.

Q. To whom did you assign the contract made between D. G. Littlefield and Treadwell & Perry?

A. To Mrs. Mary J. Perry.

Q. What was the consideration?

A. Fifty dollars.

Q. Was it paid in cash?

A. I think it was credited to me on my account; the money was either given to me or credited to my account.

Pages 814–15, fol. 1671, Andrew Dickey, re-direct.

Q. Upon a further consideration of the subject, please state what you considered you obtained in your purchase from Treadwell & Perry, April 7th, 1862?

A. The contract of April 5th, 1853; and I find upon further examination that it included the contract of September 10th, 1853, for furnaces.

Q. On a former examination why did you not mention this latter contract?

A. The furnace conveyed by that contract was a complete failure, and I did not consider it worth anything. I never burdened my mind with it.

Page 1,057, fol. 3,368, John S. Perry, direct.

Q. Why did you and Mr. Treadwell sell the contract of April 5, and September 10, 1853, to George W. Sterling?

(Same objection as last).

A. Mr. Sterling was a large creditor of the old firm, and a friend of ours.

We thought that he could make enough out of them to pay his claim.

Q. Why did he reassign to Mr. Treadwell and yourself?

Same objection.

A. Mr. Littlefield threatened him with litigation, and he proferred not to have any trouble with them.

Q. Was the sale of them to Mr. Dickey a *bona fide* transaction?

Same objection.

A. It was. I contemplated moving west. Mr. Treadwell was out of health, and had no means to use then. I understood that Mr. Dickey proposed going into business.

Q. Why did he sell them to Mrs. Perry?

Same objection.

A. Mrs. Perry and myself decided to remain in Albany, and Mr. Dickey decided not to embark in business, and he proposed to make some disposition of them.

SECOND. "Extract from the proofs relating to the performance of the agreement by Treadwell & Perry."

Appellant's Extracts, pp. 12 to 20.

NOTE.—The words in italics are omitted from the passages quoted in the Appellant's "Extracts."

Page 206, fol. 491, John S. Perry, direct.

Q. Were these furnaces successful?

A. They were not. There was the old complaint,—want of heating power. Nearly all that we sold were returned, or only partially paid for.

Q. Did Littlefield superintend the making of these patterns and the setting of the furnaces?

A. He did so, at our expense.

Q. Had this contract of September 10, 1853, *for the furnaces, any relation to the contract of April* 5, 1853, *for the stoves?*

A. None whatever.

Page 208, fol. 494.

Q. Was Littlefield employed by your firm in 1856*?*

A. He was not.

Q. Explain why the sales should have been double to those of the former year when you commanded his services?

A. The prejudice against the stove was beginning to wear off and the public was becoming better acquainted with coal burning.

Q. Was the large increase in the sales that year due to the same causes, as the increase in 1856 *?*

A. I think it was.

Q. Did you in March, 1857, *render a statement of your account against Littlefield, and did you some time afterwards commence a suit against him ?*

A. We rendered the account, and made an effort to have it settled. Failing to do so we commenced the suit.

Page 209, fol. 495.

Q. What transpired in 1860 ?

A. In May, 1860, the effects of the firm of W. & J. Treadwell, Perry & Norton were placed in the hands of James C. Cook, Esq., as receiver, for settlement. The business of manufacturing and selling stoves was carried on by him until September 1, 1860, when the patterns and stock was sold to John G. White, Esq., who continued the business *under the name and charge of Treadwell & Perry, agents,* until March 29, 1862.

Q. Did you ever hear Littlefield object to this ?

A. I never did.

Q. Did Littlefield call on you about the month of January, 1861, *relative to the manufacture and sale of these stoves under the contract of April* 5, 1853, *and what did he say on the subject ?*

A. He called at my office and stated he was dissatisfied with his arrangements with Messrs. E. Corning & Co.; that he intended to abandon the Railway and crowd the Parlor Furnace, as he had the sole right to the latter. He stated that he had invented some improvements to the Littlefield Coal Burner, which would make it more saleable : that he did not think that fifty cents premium was a just consideration for such a

store; that he ought to be paid $3.00 *premium on each; that the public would pay the difference, and we should make just as much money. He said that he would prefer to have his stoves all made at one place, and that we had better consent to annul the present contract, and make one that was more equitable to him. He said that he would not be satisfied with any arrangement that netted him less than* $10,000 *per year.*

Q. Did you accede to his proposal?

A. I did not.

Q. Did you inform Littlefield of this result, and when? (number of stoves sold in 1860.)

A. I informed him by letter April 20, 1860.

Page 210, fol. 496:

Q. Why was the number so small? (Stoves sold in 1862.)

A. I think it was due to the continued warnings made to the public by Littlefield against buying our stoves.

Page 343, fol. 685, Wm. B. Treadwell, cross-examination:

Q. Can you testify that during the fall of 1853, or at the commencement of the sales of the Lowell Gas Burner, a book was appropriated in the office for the special purpose of keeping a record of said sales?

A. I cannot; *but such a record was kept in our regular day book. I speak of* 1853.

Page 358, fol. 706, Andrew Dickey, cross-examination:

Q. Did you continue to suppose from these conversations and the letter marked Exhibit 1, that said White was the owner up to the time when said White transferred the property *and business carried on for him by*

Treadwell & Perry, agents, to the various creditors of said concern?

A. I don't remember the time; I was told he was not; but I did suppose so at the time I delivered the letter marked Exhibit No. 1.

The following references to proofs relating to the performance of the agreement by Treadwell & Perry, the appellants have omitted in their "extracts."

The shortness of the time forbids their being reprinted in full.

Page	200,	fol. 486.	John S. Perry,	direct.
"	204,-5,	fols. 489 to 490.	"	direct.
"	206,	" 491,	"	"
"	211,	" 498–9,	"	"
"	221,	" 512,	"	"
"	229,	fols. 523–4.	"	"
"	251,	" 554–5.	"	Cross-examination.
"	259,	" 565.	"	" "
"	269,	" 579–80.	"	" "
"	273,	" 585–6	"	" "
"	277–8,	" 592–3	"	" "
"	295,	" 617.	"	" "
"	306,	" 633.	"	" re-direct.
"	312,	" 642.	Wm. B. Treadwell,	direct.
"	314,	" 644–5.	Wm. B. Treadwell,	"
"	328,	" 664.	"	Cross-examination.
"	334–5,	" 673–4.	"	re-direct.
"	345–6,	" 688–9.	Andrew Dickey,	direct.
"	355,	" 702.	"	Cross-examination.
"	394,	" 757–8.	Jacob Messinger,	direct.
"	400,	" 766.	S. W. Gibbs,	"
"	404-5-6,	" 772–3–4.	John G. Treadwell,	"
"	408,	" 777.	"	"
"	413,	fols. 784.	D. G. Littlefield,	letter.

Page 419–20,	"	794–5.	"	Traveling Directions.
" 420,	"	795.	D. G. Littlefield,	letter.
" 421–2,	"	797–8.	"	"
" 422,	"	799.	Treadwell, Perry & Norton,	"
" 422–3,	"	799–800.	D. G. Littlefield,	"
" 451,	"	838–9.	"	history.
" 453,	"	842.	"	"
" 454,	"	844.	"	"
" 715,	"	1404–5.	Andrew Dickey,	re-direct.
" 1058,	"	3371.	John S. Perry,	direct.
" 1062–3,	"	3380–1.	"	"

THIRD. "Proofs relating to an agreement of September 10, 1853, between D. G. Littlefield and Treadwell & Perry, their executors, administrators and successors in business."

Appellant's extracts, pp. 21 to 24.

NOTE—The words in italics are omitted from the passage, quoted in the appellant's extracts.

Page 206, fol. 491, John S. Perry direct :

Q. *Were these furnaces successful?*

A. *They were not. There was the old complaint, want of heating power. Nearly all that we sold were returned, or only partially paid for.*

Q. *Did Littlefield superintend the making of these patterns and the setting of these furnaces?*

A. *He did so at our expense.*

Page 257, fol. 563, John S. Perry's cross-examination.

Q. *Did you not, when thus writing of said furnace, say : "several that have been put in use have not given satisfaction, but we think that some improvements that Mr. Littlefield is making would obviate the objections?*

A. *I did.*

Q. *Did you not in that allusion to an improvement Littlefield was then making, allude to the construction that was subsequently patented March* 4, 1856 *?*

A. *I don't know what improvement was alluded to. I don't remember.*

Page 258, fol. 564.

Q. Was it not stipulated in said contract of Septem- 10, 1853, that Treadwell & Perry were not to dispose of the right *or privileges* thereby conveyed, except to their successors in business, without the written consent of said Littlefield.

A. It was.

Page 299, fol. 622.

Q. Were they not made and sold in 1854 ?

A. I think they were *made* and sold during that year, more or less.

Q. Was not that the year they were introdnced, and was not that the year when nearly all were sold, that were ever sold ?

A. My impression is that most of the sales were made in 1854. *I remember that in* 1855, *Littlefield traveled extensively at the expense of Treadwell & Perry, or their successors, to try to make them satisfactory to those who purchased them, and failed to do so. Nearly all of them came back on our hands or were only partially paid for.*

NOTE.—Appellant's "Extracts" state that "the testimony of Rand, "who was a clerk for W. & J. Treadwell, Perry & Norton, and also for "said receiver, shows that this credit to Littlefield for premiums in fur- "naces, &c., on the books of W. & J. Treadwell, Perry & Norton, "then in the hands of the receiver, was $804.43." (Page 382 fol. 740.)

This is an untrue statement. Rand testified that Exhibit 40, showed a balance of $1,091.12 against Littlefield. Exhibit 39, showed a balance in his favor of $804.43, but not a word is said about "furnaces, &c."

The agreement of September 10, 1853, conveying the right to manufacture furnaces under the Patents, is set

forth in full in the separate amended answers of defendants, December 22, 1862.

Record, pp. 50 to 52, fols. 115 to 117.
" ". 87 to 89, " 182 to 185.

The following references to proofs relating to the above described agreement, and the furnaces manufactured under the same, the appellants have omitted in their extracts. The shortness of the time forbids their being reprinted in full.

Page 256, fols. 561—2, John S. Perry, cross-examination
" 297, " 620, " "
" 298, " 622, " "
" 304, " 631, " re-direct.
" 322, " 655, William B. Treadwell, cross-exam'n.
" 407, " 776, John G. Treadwell direct.

FOURTH. "Extracts from the proofs containing complainant's testimony as to the relation of the patents to each other."

Appellant's extracts, pp. 25 to 32.

NOTE.—The words in italics are omitted from the passages quoted in the appellant's "extracts."

Page 399, fol. 765, S. W. Gibbs, direct:

Q. Did you put upon the patterns made by you in 1853 *the words and figures "patented* 1851, *improved* 1853;" *if so, by whose direction?*

A. I put them on by direction of Littlefield.

Page 404, fol. 771, John G. Treadwell, direct:

Q. How was the stove of 1851 *marked?*

A. Patented 1851, *D. G. Littlefield, Lowell, Mass.*

Q. How was the stove of 1852 *marked?*

A. Patented 1851, *D. G. Littlefield, Lowell, Mass.*

The following references to proofs in respect to the relation of the patents to each other, the appellants have omitted in their "extracts." The shortness of time forbid their being reprinted in full.

NOTE.—The statement on page 25 of appellant's exhibits, viz: "*and without testifying that any of these stoves are in any way related to each other as improvements or inventions applicable to each other*," we submit is utterly destitute of truth, as shown throughout the following testimony.

Page	46–7,	fols.	109–10,	D. G. Littlefield,	amended ans.
"	49,	"	113,	"	"
"	64,	"	137,	"	"
"	77,	"	164,	"	"
"	84,	"	177,	"	"
"	172,	"	369,	"	"
"	199,	"	467–8,	John S. Perry,	direct.
"	202,	"	485,	"	"
"	203,	"	487,	"	"
"	204-5,	"	448 to 590	"	"
"	210,	"	496,	"	"
"	211,	"	498,	"	"
"	235,	"	532,	"	Cross-examination.
"	236,	"	533,	"	"
"	242–3,	"	542–3,	"	"
"	245,	"	546,	"	"
"	295,	"	617,	"	"
"	313,	"	643,	W. B. Treadwell,	direct.
"	315,	"	645–6,	"	"
"	335–6,	"	675,	"	redirect.
"	338–9,	"	679–80,	"	cross-examination.
"	341,	"	682–3,	"	re-direct.
"	387,	"	748,	John S. Perry,	direct.
"	389–90,	"	751,	"	"
"	392,	"	755,	Andrew Dickey	"
"	396,	"	761,	Jacob Messenger,	"
"	398,	"	763,	Wm. B. Treadwell,	"
"	400–1,	"	767,	S. W. Gibbs,	"
"	402,	"	769,	"	"
"	403,	"	771,	John G. Treadwell,	"
"	409,	"	779–80,	"	"
"	410–11,	"	781–2,	"	"
"	426,	"	804,	D. G. Littlefield,	advertisement.
"	448–53,	"	833–42,	"	history.
"	805–812,	"	1646–1666,	Andrew Dickey,	re-direct.
"	1055–1057,	"	3363–3367,	John S. Perry,	direct.
"	1066–1067,	"	3388–3391,	"	"

FIFTH. "Extracts from the proof, showing all the testimony introduced by the complainants as to the infringement by the defendants."

Appellant's extracts, pp. 33 to 40.

NOTE.—The words in italics are omitted by the appellants from the passages quoted in their extracts.

Page 211, fol. 498, John S. Perry, direct:

Q. In what does it differ from the *two* former?

A. The opening for the fire-pot is clear and unobstructed, which is produced by suspending the reservoir from the upper part of the stove.

Page 391, fol. 754, Andrew Dickey, direct:

Did you ever hear that Littlefield had given to Treadwell & Perry, or their assigns, the notice provided for in the contract which should vitiate it if they continued to neglect to supply the market for their stoves as provided?

A. I never have.

Q. Did Littlefield ever claim to you that he had given this notice?

A. He never has.

Q. Did you ever represent yourself to the customers of the firm, or hear it represented that Treadwell & Perry, or their successors, had abandoned the manufacture and sale of those stoves; or did you ever hear that they had surrendered the contract to Littlefield?

A. I never have.

Page 411, fol. 782, John G. Treadwell, direct:

Q. Then, in your opinion, does not the manufacture and sale of these stoves by *by Jagger & Littlefield within the States of New York and Connecticut*, trespass upon the rights of the owner of the contract of April 5, 1853?

A. I think it does.

The following proofs from the Record relating to the infringement of the rights of Treadwell & Perry, the appellants have omitted in their "extracts."

Page 64, fol. 137. D. G. Littlefield's, amended answer.
" 84, " 177–8. " "
" 172–3," 369–70. " "
" 176, " 383. Ira Jagger, amended answer.
" 179, " 396. " "
" 184, " 411. D. G. Littlefield, amended answer.
" 210, " 496. John S. Perry, direct.
" 335–6," 675. Wm. B. Treadwell, re-direct.
" 344, " 687. Andrew Dickey, direct.
" 387, " 748. John S. Perry, "
" 395–6," 760. Jacob Messinger, "
" 402, " 769. S. W. Gibbs, "
" 409-10, " 779–781. John G. Treadwell, "
„ 426, fol. 804, D. G. Littlefield, advertisement.
" 519, " 931, " History.
" 526, " 940, " "
" 531, " 947, " "
" 537, " 955, " "
" 538–9, " 956–7, " "
" 805 to 812, " 1647 to 1666, Andrew Dickey, re-direct.
" 1055–6, " 3364, John S. Perry, direct.
" 1066–7, " 3390–1, " "

We deny the statement made by appellants that "all "the proofs relating to the infringement taken subse- "quent to the filing of the supplemental bill was to "show an infringement of the reissue patents set out in "said bill, which was granted to Littlefield on the 8th "and 22d of November, 1864; the proofs showing that "the said reissue patents were infringed by reason of the "making of the said Nos. 2 and 3, Morning Glory, the "construction patented December 9, 1862, and August "18, 1863.

The reissues were all made without the consent of the appellee. They were embodied in the Bill of Complaint and also in the Bill of Revivor and Supplement, for the purpose of giving a true history of the case.

The proofs taken, clearly show the infringement of patents of—

January 24, 1854;
June 25, 1861;
December 9, 1862;
August 18, 1863;

Also the re-issues of same.

SIXTH. "A summary of all the proofs before the master that have any bearing upon the question of profit made by the defendants, by reason of manufacturing the Morning Glory Stove.

Appellant's extracts, 41 to 60.

The forty-seven interrogatories referred to by appellants upon page 41 of this "extract," as well as many others propounded to the witnesses, were required by reason of the apparent determination on the part of the defendants not to give any satisfactory answers touching the main subject of enquiry, viz: *the sales and profits.*

That their offer to make and submit to the master a full statement, &c., (record page 588), was not in good faith, is clearly shown by their failure to furnish such a statement after the books were returned to them for that purpose.

Record, pp. 562, 563, 596, 698, 717, 727, 1073,
fols. 1011, 1355, 1361, 1409, 1433, 3406.

The testimony of defendant, Jagger, (pages 582, 587), that the ledger shows a final balance of $50,758.35, is not entitled to much weight in view of other testimony, viz:

Page 587, fol. 1070. Ira Jagger, direct.

Q. As a book-keeper, do you consider that a true statement of the profits of the business?

A. I am not prepared to state.

Q. Do you consider yourself an experienced bookkeeper?

A. I don't profess to be an accountant.

Q. Did you ever make a trial balance of your books?

A. I did not. I never found time for it.

* * * * * * *

Q. Then how can you say that the balance of this merchandise account, in which the nominal accounts and the inventory are not included, will show about the true state of the business?

A. If I said so I misunderstood the question; if the books were written up they should show the profits of the business pretty nearly.

Page 753–4, fol. 1507, 1509. John A. Zweers, the accountant, direct.

Q. Is a set of books that have never been balanced reliable as a data for showing the condition of the business of which they treat?

A. They are not.

Q. Were you employed by the master, among other things, to make a trial balance of the books of the defendants?

A. I was.

Q. Have you completed this work?

A. I have.

Q. What do you make the net profits made by defendants, from June 1, 1862, to June 25, 1865, as shown by said corrected books?

A. $82,813.96.

Q. Does this amount include the $2,000.00 deducted by Wasson from the account that appeared in the ledger?

A. It does not.

Q. How many errors did you find between the journal and ledger belonging to the firm?

A. Including some entries in the journal not posted to the ledger, I found 221 errors.

The attempt on the part of the appellants to make it appear that the rent of buildings, repairs, taxes, bad debts, advertising, selling, and the contingent expenses generally, had not been taken into account in the statement of profits, is not borne out by the testimony. Every entry, debit and credit, appeared upon the books, thus including all expenses of every description.

The nominal accounts, such as interest, bad debt, &c., had never been closed previous to the books being balanced by the accountant, Zweers.

After the 221 errors in the books had been corrected, and the entries all made, the trial balance showed a *net* profit upon the whole business, *after paying every expense*, including the $2,000.00, deducted by Wasson, of $84,813.96.

The Appellants say, (page 59 of extracts), "internal "revenue amounting to many thousands of dollars, (the "total sales of these stoves amounting to $168,265.27, "page 669), must have been paid by the defendants in "compliance with the law, which could but reduce the "net receipts upon the sale of these stoves, as shown by "their books."

John Sayles, United States Assistant Assessor, testifies (page 628, record), that the defendants rendered their

statement of income for the years 1862, 1863, 1864, and 1865, at.....$41,187.50

The testimony of the defendant Jagger, admits that the books of the firm showed an increase of.....50,758.35

Showing this admitted balance upon which defendants paid no income $9,570.85

The true statement of profits after deducting all losses and contingencies, as made by the professional book-keeper, is.....$84,813.96

Amount on which the income tax was paid 41,187.50

Actual profit made by defendants upon which they paid no income tax,.....$43,626.46

Thus, in violation of their solemn oath, they defrauded the Government of more than one-half of the amount justly due.

The Appellants quote in their "extracts," (page 50), "The master ordered the accountant to give up the "books as soon as possible."

The order is in the following terms:

"The master ordered the accountant to give the books "up as soon as possible to the defendants, in order to enable "them to make a statement of their books by the 1st of "March next, and the master expects the defendants will "have said statement ready at said date, and that it be "sent to him for examination, in order to enable him "to expedite this reference."

After a lapse of more than two months, the promised statement not having been furnished, the books were returned to the accountant.

Page 53, of "extracts," quote, that the accountant "admits that at this time he was in the employ of the complainant."

The testimony is as follows :

Q. How long, and in what capacity have you worked for complainant ?

A. Off and on about three months.

Q. Did your last answer refer to work before the commencement of this examination ?

A. It does.

Subsequent testimony shows that the accountant made copies of the testimony, &c., for complainant, and was ready to do so for the defendants. Record, page 784, fol. 1594–5.

Again, " accountant also admits that he had exceeded the instructions of the master." Q. 2334.

The testimony, page 785, fol. 1597.

Q. What abstracts and statements have been furnished by you in this testimony which were not ordered by the master ?

A. The statement of the profits made by defendants; the statement of goods sold by defendants; also a statement of the scrap iron for which defendants have credit on the books of James D. Wasson; also some statements of the cost of various goods made from invoices belonging to defendants.

Also; page 780, fol. 1584.

Q. Who told you to make a statement of defendant's profits ?

A. Mr. Perry.

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A. Mr. Perry.

The directions given by the master to the accountant, (page 554, Record), were as follows:

"The master here on examining the books, decides it "proper to select and appoint a regular and competent "accountant to draw off abstracts of the stove accounts "in question. Whereupon John A. Zweers is sworn in "the case, is selected as an accountant, and requested to "forthwith proceed and make the necessary abstracts "and submit the same."

The books being full of errors (221 in number) and no division having been made between the lawful and the unlawful portions of the manufacture, there was but one course left for the accountant in proceeding to "ascertain the profits, gains and advantages which had arisen or accrued, &c.," and that was to ascertain and report the profits on the whole business.

Again, the Appellants say, (page 53 of extracts):

"To do this, which was his own idea, he fabricates a "new set of books, J. K., and L. and founds his statements "thereupon, into which he brings matters taken from "the testimony, such as the sale of the business and the "entire establishment, to one Bonnell, in July 1865, for "$50,000.00."

The testimony, page 779, fol. 1582.

Did Mr. Perry advise or request you to make up the books marked J., K. and L., which have been offered in evidence?

A. He did not.

Q. Can you now remember whether it was entirely your own idea to prepare these books, or suggested to you by some one else?

A. It was my own idea.

Q. What was your object in preparing these books?
A. To find a trial balance.

It was taken for granted that an experienced accountant would proceed to make a trial balance of a set of books so full of errors as these, in his own way, and according to his "own idea."

The embodying of the clandestine sale to Bonnell, which for a fraudulent purpose was withheld from the books, was necessary in order to show the true state of the business. If this sale had not been discovered and the proper entry made, the net profits would have appeared to be $41,992.29 instead of $84,813.96, which is in accordance with the proofs.

Again, pp. 53 and 54 of Appellants' "extracts," they say: "It would only have been necessary to refer to the "defendants' books after this accountant had corrected "the errors, where we find $34,165.07 as the amount, "which figures were thus found, owing to this account- "ant omitting to enter to the credit of merchandise, or "erasing therefrom, the inventory which he found in de- "fendants' books, of the stock on hand, April 1, 1865, "amounting to $16,358.10. Now, by adding the amount "of this inventory to the amount thus found, which "would be equivalent to crediting this inventory to mer- "chandise, it will be ascertained that their entire profits "upon their furnace and stove business which were to be "reduced by uncollected debts and bad debts prior to "April 1, 1865, was $50,523.17, which is $235.18 less than "sworn to by Mr. Jagger, in reply to the last mentioned "interrogatory. Said accountant admitted on his cross- "examination that this could have been done with a "good deal of labor. The whole amount of income re- "turned for taxation during this time, by both defend- "ants, was $41,187.50.

"This corresponds with the testimony of Jagger, also "with the finding of this accountant and completely re- "futes his own statement founded upon the books J. K. "L., which were evidently manufactured for the purpose "of showing that the defendants' profits on their entire "business, while manufacturing these stoves, amounted "to a greater sum than sworn to by Mr. Jagger.

It is very easy to show the false character of this plausible statement.

1. The balance of net profits shown upon the books as found before the 221 errors had been corrected, was.....		$34.165 07
2. The balance of the 221 errors corrected was.....		5.827 22
3. The sale of the business and property to Mr. Bonnell, "for cash or its equivalent" was.....	50.000 00	
Less deductions made on the books	7.178 33—	42.821 67
		$82.813 96
4. Discount on Wasson's bill subsequently settled.....		2.000 00
Total profits.....		$84.813 90

The inventory of merchandise amounting to $16.358,10, was taken April 1, 1865.

The sale to Bonnell took place July 26, 1865.

As the business of manufacturing had been going on largely during the interval, it follows that an inventory taken four months previous, could not have been made the basis for the sale, and we therefore find on pages 703-4, of the record, the bill of sale to Bonnell, viz:

April 1.	To inventory of stock on hand...	$16.008	10
May 1.	" amount paid for stock and labor during the month of April.....	6.076	52
June 1.	" same during the month of May.....	6.804	38
July 1.	" same during the month of June	4.872	78
" 26.	" same during the month of July.....	6.719	09
" "	" advance on iron purchased to date.....	2.450	00
" "	" inventory of accounts due Jagger and Littlefield.....	4.503	08
" "	" profit on stoves and furnaces sold from April 1, to date,	2.675	25
" "	" flasks, &c.....	3.000	00
		$53.109	20
	To credit by discount, &c.....	3.109	20
		$50.000	00

From this amount was deducted,		
Inventory of accounts due Jagger and Littlefield.....	4.503 08	
Profits on stoves and furnaces sold from April 1, to July 26,.....	2.675 25	
		7.178 33
Balance entered on the books as the proceeds of the sale.....		$42.821 67

The Appellants have attempted to make a point of a clerical error in an order made by the master, March 25, 1867. (Record, page 718), wherein he directs, "that the books of account be re-delivered to plaintiff, or his agent and clerk;" the master of course meaning his own "agent and clerk."

The testimony clearly shows that this, accountant was willing to work for either party, at his regular price, $5.00 per day.

The statements of the total net profits upon the entire business of the defendants, from June 1862, to July 25, 1865, and also upon each size and kind of the several descriptions of stoves, mentioned in the decretal order, will be found set forth, in great detail, on pages 122 to 143 of Appellee's brief, filed in this cause, to which reference is respectfully made.

E. W. Stoughton
John H. Reynolds
Fred Wood